

AGENDA BOOK

Board of Regents

August 6, 2020

Morehead, Kentucky
www.moreheadstate.edu/bor



Morehead State University

Board of Regents Quarterly Board Meeting

Thursday, August 6, 2020 at 9:00 a.m.

via webex video teleconference
(or audio teleconference for those
with limited or no video availability)

Morehead State University

Board of Regents Members

Kathy Walker, Chair

Eric Howard, Vice Chair

Annie Adams

Craig Dennis

Adam Hinton

Sanford Holbrook

Debbie H. Long

Wayne M. Martin

Craig Preece

Terri S. Walters

Emily Wiley

Joseph A. (Jay) Morgan, President

**BOARD OF REGENTS MEETING
MOREHEAD STATE UNIVERSITY**

August 6, 2020 at 9:00 a.m.
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AGENDA

QUARTERLY BOARD MEETING— 9:00 a.m.

I. CALL TO ORDER

II. OATH OF OFFICE ADMINISTERED TO NEW REGENT, EMILY WILEY

III. ROLL CALL

IV. PRESIDENT’S RECOMMENDATIONS & REPORTS

A. Consent Agenda (Action)

1. Approve Minutes of June 18, 2020 Quarterly Board Meeting	1
2. Approve Awarding of Honorary Doctorate	7
3. Approve Founders Award Honoree	8
4. Approve Policy Revisions	9
5. Approve Naming of Facility	72
6. Approve Student Code of Conduct Revisions	73
7. Approve Standard Operating Procedure Manual Revisions	80
8. Approve OVC Governing Board Certification	107
9. Approve Repurpose of Bucks for Brains Fund	109
10. Approve Job Description	111

B. President’s Report

1. 2020-2021 University Goals

V. OTHER BUSINESS

- **Conflict of Interest & Board Code of Ethics Forms**, Jacqueline Graves
- **Kentucky Open Records & Open Meetings Acts**, Jacqueline Graves

VI. ADJOURNMENT

NEW REGENT ORIENTATION

The New Regent Orientation will be rescheduled for a date and time to be determined.

Agenda available online at <http://www.moreheadstate.edu/bor>

**BOARD OF REGENTS
MOREHEAD STATE UNIVERSITY
QUARTERLY MEETING**

The Board of Regents of Morehead State University met at 9:30 a.m. on Thursday, June 18, 2020, in Room 329 of the Adron Doran University Center (ADUC), in Morehead, Kentucky.

CALL TO ORDER

Chair Kathy Walker called the meeting to order, stated that those who needed to wear masks could certainly do so, and stated that the meeting room was spread out for social distancing.

MEDIA

Chair Walker recognized Leeann Akers, with Morehead State Public Radio, as the media representative in attendance.

ROLL CALL

Chair Walker introduced Jacqueline Graves to call the roll. The following Board members were present: Chair Kathy Walker, Vice Chair Wayne Martin, Dr. Annie Adams, Colby Birkes, Craig Dennis, Adam Hinton, Sanford Holbrook, Eric Howard, Debbie Long, Craig Preece, and Terri Walters.

**REPORT ON
STUDENT
GOVERNMENT
ASSOCIATION**

Colby Birkes reported on SGA initiatives for the past year, particularly on focused initiatives throughout the year to increase transparency, philanthropic efforts, close the gap between campus and community, and partnerships with veterans affairs, morehead cinemas, MSU alumni association, and the Kentucky Council on Postsecondary Education.

**ADOPT
RESOLUTION OF
COMMENDATION**

Chair Kathy Walker read the following resolution of commendation for Colby Birkes, whose term ends June 30, 2020:

RESOLUTION HONORING COLBY BIRKES

WHEREAS, Mr. Colby Birkes of Winchester, Kentucky, served with distinction as the student member of the Board of Regents of Morehead State University since July 1, 2019, and

WHEREAS, Mr. Birkes also served in superior fashion during this period as President of the University's Student Government Association, and

WHEREAS, Mr. Birkes worked to encourage students to acknowledge and address incidents that impacted all University students, and

WHEREAS, Mr. Birkes displayed outstanding leadership to promote participation in community service with the Morehead community, and

WHEREAS, Mr. Birkes' active engagement with the Board of Regents and his stewardship of the Student Government Association consistently demonstrated his high ethical standards and abiding commitment to students and institutional success.

THEREFORE, be it resolved by the Board of Regents of Morehead State University that Mr. Colby Birkes be and hereby is commended for his year of honorable and outstanding service on the Board of Regents and for his leadership of the Student Government Association.

Done this eighteenth day of June 2020.

Kathy Walker, Chair

Jacqueline Graves, Secretary

Joseph A. ("Jay") Morgan, President

**ELECTION OF CHAIR
AND VICE CHAIR**

President Morgan thanked Colby for his service and recognized Emily Wiley as the new Regent and SGA President. Vice Chair Martin also expressed his gratitude for Colby's work and announced that Colby has been elected by fellow students to serve on the Kentucky Council on Postsecondary Education.

Chair Walker stated that nominations were in order for election of Chair and Vice Chair.

MOTION: Sanford Holbrook moved that Kathy Walker be elected Chair of the Board. Craig Preece seconded the motion.

VOTE: The motion carried unanimously. Chair Walker abstained from voting.

MOTION: Vice Chair Martin moved that Eric Howard be elected Vice Chair. Sanford Holbrook seconded the motion.

VOTE: The motion carried unanimously. Eric Howard abstained from voting.

**ELECTION OF
SECRETARY AND
APPOINTMENT OF
TREASURER**

Chair Walker stated that nominations were in order for election of Secretary and appointment of Treasurer.

MOTION: Wayne Martin moved that Jacqueline Graves be elected Secretary and Mary Fister-Tucker be appointed Treasurer. Sanford Holbrook seconded the motion.

VOTE: The motion carried unanimously.

**PRESIDENT'S
RECOMMENDATIONS
AND REPORTS*****Consent Agenda***

Chair Walker asked the Board to consider the items on the Consent Agenda:

1. Approve Minutes of April 16, 2020 Special Called Quarterly Meeting
2. Ratify Spring 2020 Graduates
3. Ratify Personnel Actions
4. Approve University Organizational Chart for 2020-2021
5. Approve Policy Revisions
6. Approve Faculty Senate Constitution
7. Approve Research & Analysis Skills Certificate
8. Approve Granting of Emeritus Status
9. Approve One-Time Exception to Tenure Policy PAC-27

Dr. Annie Adams thanked President Morgan for reviewing and revising policies in need of updating.

MOTION: Eric Howard moved that the Board approve the items on the Consent Agenda. Adam Hinton seconded the motion.

VOTE: the motion carried unanimously.

Recommendations

The President recommended:

***Accept Third Quarter
Financial Report and
Amend Operating Budget***

RECOMMENDATION: That the Board of Regents accept the financial statements and amend the operating budget for the third quarter of the fiscal year that will end June 30, 2020.

President Morgan noted that the University experienced a positive cash position at the end of the quarter and that the University tried vigorously to improve its cash position, particularly in light of the novel coronavirus pandemic, COVID19. He also stated that Mary Fister-Tucker, Vice President for Fiscal Services and Chief Financial Officer, and Teresa Lindgren, Executive Director of Budgets and Financial Planning, have been working on a new way to display and report quarter-end financials to the Board. This proposed format would align with the required format for audited financial statements and places greater focus on the University's core missions, allows monitoring of expenditures in real-time, and places greater focus on areas that are key components to performance funding.

Colby Birkes commended President Morgan and the University for not passing costs associated with COVID19 to students.

Dr. Annie Adams asked what money was being used to provide refunds. President Morgan stated that institutional money was used to provide refunds and then the institution reimbursed itself with CARES money.

*Approve 2020-2021
University Operating
Budget, Fee Schedule,
and Personnel Roster*

The President recommended:

RECOMMENDATION: That the Board of Regents approve the recommended 2020-2021 Operating Budget, which totals \$135,393,000, the 2020/2021 Fee Schedule, and the 2020/2021 Personnel Roster.

Mary Fister-Tucker presented on the 2020-2021 University Operating Budget. She stated that the budget intentionally includes no increases to tuition, fees, or resident hall rates. Additionally, graduate tuition rates have been reduced approximately \$200 per credit hour for 600 level courses in the Volgenau College of Education. When drafting the 2020-2021 Operating Budget, areas of high priority included student affordability, the performance based funding model, and a fiscally conservative approach in light of financial uncertainties due to COVID19, pension costs, and potential state funding reductions.

She explained that total revenues for the 2020-2021 Operating Budget amount to \$135.4 million, which is \$4.9 million (or 3.5%) less than the 2019-2020 Operating Budget. The 2020-2021 Operating Budget consists of the following expenditures: personnel services (48.3%); grants, loans, and benefits (17.9%); operating expenditures (18.2%); capital outlay (1.2%); debt service (5.9%); and other transfers (8.5%). She explained that the percentage of expenditures for student financial aid, student services, and instruction increased from last fiscal year to this fiscal year, showing the University's commitment to student affordability and success. The 2020-2021 Operating Budget also relies on the one-time use of \$3.1 million from University savings to support anticipated revenue uncertainties.

President Morgan explained that the one-time use of University savings was used to prevent layoffs or furloughs. He further stated that the 2020-2021 Operating Budget will look very different than prior fiscal year budgets, due to stimulus money received from the federal government.

Sanford Holbrook asked if the 2020-2021 Operating Budget was based on the number of students on campus. Mary Fister-Tucker stated that the operating budget is based on the number of students on campus and living in residential housing for the 2020-2021 fiscal year.

Dr. Annie Adams asked whether the University could waive online instruction fees for students. Mary Fister-Tucker stated that this is not something the University has considered and that CARES money received by the University cannot be used for this purpose.

Craig Dennis asked if the cash position includes refunds due to COVID19. President Morgan stated that the numbers reflect financials to March 31, 2020 and that student refunds were issued in April of 2020. Refunds issued in April included an estimated \$1.9 million for housing, \$40,000-\$50,000 for parking, and \$200,000-\$300,000 for dining.

MOTION: Craig Preece moved that the Board approve the President's recommendation. Eric Howard seconded the motion.

VOTE: The motion carried unanimously.

Craig Dennis asked whether the University experienced a decline in international student enrollment. President Morgan stated that the overall impact of a decline to international student enrollment is minimal because the University has less international students than in prior years.

Chair Walker asked President Morgan when the University would have knowledge of the state budget. President Morgan responded that a state forecasting group is scheduled to meet in July or August and then the Governor and state budget office would make decisions.

Debbie Long asked whether closing campus after Thanksgiving provides financial savings to the University. President Morgan replied that doing so provides very minimal savings.

Wayne Martin commented that the University should have a recruiting advantage because there are minimal cases of COVID19 in Morehead, Kentucky.

Reports

Report on Personal Service Contracts

Kim Oatman reported on personal service contracts, which represent all such contracts issued with amounts greater than \$10,000 between December 5, 2019 and March 5, 2020.

Report on Campus Master Plan and Facilities

Kim Oatman reported that the campus master plan is updated every five years. He stated that he and President Morgan chose to complete the update in-house to save money and that the updates make the master plan more practical for the University's current financial state.

President's Report

OTHER BUSINESS

President's Annual Evaluation & Review

President Morgan explained the three phases of the University's reopening plan. The plan has been filed with the Kentucky Council on Postsecondary Education and the Governor's Office.

The Board as a whole conducted and discussed President Morgan's annual evaluation and review. Chair Walker commended President Morgan for his leadership, professionalism, transparency, and commitment to the student body. She stated that he received glowing reports from fellow Board members and that the University is in great hands with him as President.

Wayne Martin moved that President Morgan's contract be extended one additional year and that the Board Chair be given authority to negotiate the contract extension. Eric Howard seconded the motion and the motion carried unanimously.

*Board Evaluation of
the Board*

President Morgan thanked the Board for their leadership and gave thanks to others in the room.

The Board as a whole conducted and discussed the evaluation of the Board. Chair Walker stated that the Board is made up of individuals from diverse social and political backgrounds who possess various talents. She commended members for their professionalism and respectfulness towards one another. She further stated that one area the Board could use improvement is attendance to meetings and preparation for meetings. Chair Walker reminded members that Board members have limited responsibilities for strategy and policies, which do not involve the daily operations of the University.

*Approve 2020-2021
Meeting Dates*

The Board approved the following 2020-2021 dates:

- August 6, 2020 – Quarterly Meeting & New Regent Orientation
- September 2020 – Governor’s Symposium (Tentative Dates: Sept. 14-15 or Sept. 21-22)
- October 16, 2020 – Audit Committee Meeting & Work Session (Homecoming)
- November 21, 2020 – Fall Commencement
- December 3, 2020 – Quarterly Meeting
- February 25, 2021 – Work Session
- March 25, 2021 – Audit Committee Meeting & Quarterly Meeting
- May 8, 2021 – Spring Commencement
- May 13, 2021 – Work Session
- June 17, 2021 – Quarterly Meeting

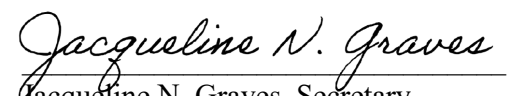
**CLOSED EXECUTIVE
SESSION**

Chair Walker entertained a motion from Sanford Holbrook that the Board enter into Closed Executive Session pursuant to KRS 61.810 to discuss matters relating to proposed or pending litigation against or on behalf of the University. Eric Howard seconded the motion. The motion carried unanimously. The Board took no action while in Closed Executive Session.

ADJOURNMENT

There being no further business to conduct, Sanford Holbrook moved that the meeting be adjourned and Eric Howard seconded the motion. The motion carried unanimously.

Respectfully submitted,


Jacqueline N. Graves, Secretary
Board of Regents

APPROVE AWARDING OF HONORARY DOCTORATE

**BOR (IV-A-2)
August 6, 2020**

Recommendation:

That the Board of Regents approve the awarding of the honorary degree of Doctorate of Humane Letters to Andy Prefontaine at the Fall 2020 Commencement ceremonies.

Background:

Mr. Andy Prefontaine (71) and his wife, Debbie, have been avid supporters of Morehead State University over the years, donating resources and volunteering their time to encourage other alumni to give back and support the University. Mr. and Mrs. Prefontaine established the Andy and Debbie Prefontaine Scholarship Endowment, with a generous gift to the University of \$750,000.

Mr. Prefontaine is an entrepreneur who founded and owns Family Leisure Retail. Family Leisure is based in Indianapolis and sells recreational products. These include many fun family products, such as patio furniture, swimming pools, spas, hot tubs, and pool tables. In addition to the Indianapolis location, Family Leisure is also located in Nashville, Memphis, Little Rock, Kansas City, San Antonio, Oklahoma City and Birmingham. Mr. Prefontaine also owns Pendleton Pike Properties, Watson's of Minneapolis Properties, Family Leisure Consulting Corporation, Sierra Advertising and Prefontaine Farms, located in Summitville, Indiana.

As a student, Mr. Prefontaine was a member of the Morehead State University ROTC program's first commissioned graduating class and served as the last President of the Aquila Club before the social organization became the national fraternal organization Pi Kappa Alpha. Mr. Prefontaine is presently serving on the University Foundation Board.

A former member of the Juvenile Diabetes Research Foundation in Indianapolis, Mr. Prefontaine is presently working with the Sisters of the Holy Cross in Vietnam, servicing the blind and visually impaired in seven orphanages in that country, built a new orphanage in DeLat, Vietnam in 2018, and is presently remodeling another orphanage with a 2021 completion date.

Mr. and Mrs. Prefontaine reside in Naples, Florida and also have residences in Indianapolis, Indiana; Oxford, Mississippi; and Saigon, Vietnam.

Prepared by: Jim Shaw

**APPROVE FOUNDERS
AWARD HONOREE**

**BOR (IV-A-3)
August 6, 2020**

Recommendation:

That the Board of Regents approve the nomination of Dr. Robert Albert as the recipient of the 2020 Morehead State University Founders Award.

Background:

Dr. Robert “Bob” Albert served as Morehead State University’s interim provost and vice president for academic affairs from July 1, 2018 until his retirement on June 30, 2020. Albert provided exceptional leadership during one of the institution’s most difficult periods addressing the challenges of COVID-19 and the pivot to online instruction in Spring 2020.

Albert joined MSU’s faculty in 1995 to teach courses in finance. He served as interim dean for one year before being named dean of the College of Business in July 1999. As dean, he helped lead efforts for the official naming of the college as the Elmer R. Smith College of Business and Technology.

During his tenure at MSU, Albert served as chair of the Intercollegiate Athletics Committee, the president of the Morehead-Rowan County Chamber of Commerce, chair of New City Morehead, and president for the Southern Business Administration Association.

An MSU graduate, he earned a bachelor’s degree in English in 1984 and a Master of Business Administration degree in 1985. He completed his Ph.D. degree in finance from the University of Cincinnati in 1992.

APPROVE POLICY REVISIONS

**BOR (IV-A-4)
August 6, 2020**

Recommendation:

That the Board of Regents approve the revision of PG-6 as attached effective August 14, 2020 contingent on no legal stay being issued by the courts.

Background:

The U.S. Department of Education recently issued a 2,000 plus page document setting forth new regulations for Title IX dealing with sexual harassment. The regulations are set to become effective on August 14. Numerous lawsuits have been filed across the nation requesting courts to stay the implementation of the regulations and to require their amendment. Therefore, it is requested that the revised policy be approved contingent on the regulations going into effect. If the courts do stay the effective date, then the University would have maintain the current policy.

The new regulations require complete neutrality in the processing of claims and set forth extensive detailed procedures and recordkeeping mandates for the University. The regulations also limit the jurisdiction of Title IX claims and also enact stringent training requirements.

Prepared by: Jane V. Fitzpatrick

Policy: PG- 6

Subject: Title IX Sexual Misconduct Policy, See also University Administrative Regulation 337

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Approval Date: 07/01/85

Revision Date: 04/30/93; 09/15/05; 09/24/15; 02/27/20; 8/06/20

PURPOSE:

Morehead State University is committed to complying with education with state law, Title VII, as well as Title IX and related laws, including the Jeanne Clery Act (Clery Act) and the Campus Sexual Violence Elimination Act (SaVE Act). These policies and procedures are is adopted to prevent, investigate and respond to incidents of sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking in violation of Title IX. These guidelines apply to all members of the University community (students, faculty, staff, volunteers, contractors and subcontractors). The University will respond promptly and effectively to reports of sexual misconduct in a manner that is not deliberately indifferent, and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy on Sexual Misconduct.

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APPLICATION:

This policy applies to all faculty, staff, employees and students, of the University, including affiliates, volunteers, guests and subcontractors of the University. This policy includes all medical personnel working at the dispensary, clinic, infirmary, student health center, athletic facilities or similar facilities whether they are employees, volunteers or paid under contract for services.

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Morehead State University is committed to creating and maintaining a community where all individuals who participate in University education programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Morehead State University will not tolerate sexual misconduct as defined in this Policy, in any form. Such acts of violence are prohibited by University policy, as well as state and federal laws. Individuals who the University determines more likely than not engaged in these types of behaviors are subject to penalties up to and including dismissal or separation from Morehead State University, regardless of whether they are also facing criminal or civil charges in a court of law.

Nothing contained in this policy shall be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States. This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States. ee.

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DEFINITIONS:

A. MSU POLICY DEFINITIONS

MSU policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination which violates state and federal law and University policy. Different forms of sexual misconduct are explained in this policy. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of gender discrimination that ~~are is~~ not covered by one of the forms of sexual misconduct addressed in this policy, please see MSU's other policies on discrimination.

Actual Knowledge Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any official of the University who has the authority to institute corrective measures on the University's behalf.

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Complainant means an individual who has reported being or is alleged to be the victim of conduct that could constitute sexual harassment.

Consent as used in this policy is defined as follows:

Consent is **informed**. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is **voluntary**. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. A spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Consent cannot be assumed to be given by the absence of a "no".

Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not

sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the alleged victim was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

Consent cannot be given when a person is:

- Less than sixteen (16) years of age;
- Sixteen (16) or seventeen (17) years of age and the actor is at least ten (10) years older than the victim at the time of the sexual act;
- Unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or mental illness;
- Mentally incapacitated;
- Physically helpless; or
- Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency unless the persons are lawfully married and no court order prohibits the contact.

Dating Violence means violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Deliberate Indifference is unreasonableness in light of the known circumstances.

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Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Kentucky; or
- Any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kentucky.

Education Program or Activity includes locations, events, or circumstances within the United States over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.

Formal Complaint is a document signed and filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the University's grievance procedures consistent with this policy that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed by the University for the Title IX Coordinator, and by any additional method designated by the University. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal Complaint. Where the Title IX Coordinator signs a formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sexual Harassment Sexual harassment is conduct based on sex that satisfies one or more of the following:

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- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
 - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
 - Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
- can take one of two forms: (1) Hostile Environment and (2) Quid Pro Quo

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(1) Hostile Environment refers to sexual conduct so severe, pervasive, and objectively offensive as to unreasonably interfere with a person's work or educational performance or creates an environment that a reasonable person and the specific person being harassed would find intimidating, hostile, or offensive. This form may come from a supervisor, educator, or any other person at the institution.

(2) Quid Pro Quo refers to sexual conduct so severe, pervasive, and objectively offensive as to alter the conditions of employment and create an abusive working environment. Examples of a quid pro quo relationship may include (but are not limited to) submission to unwelcome advances of a supervisor or educator as an express or implied condition of receiving work or educational benefits or a tangible work or educational detriment resulting from a person's failure or refusal to submit to sexual demands of a supervisor or educator.

Not all conduct with sexual connotations constitutes sexual harassment. To constitute sexual harassment, said conduct must satisfy the legal standard as set forth above.

Stalking occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Supportive Measures means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the University's education program or activity, without unreasonably burdening the other party; protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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Unwelcome Conduct on the basis of sex **is** determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

Sexual Assault refers to any sexual act directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the survivor is incapable of giving consent, as well as incest or statutory rape. Examples of sexual assault for purposes of this policy include but are not limited to:

- Intentional touching of another person's intimate parts without that person's consent;
- Other intentional sexual contact with another person without that person's consent;
- Coercing, forcing or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the survivor;
- A person with whom the survivor shares a child in common;
- A person who is or was residing in the same household as the survivor; or
- Any person against someone who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating Violence refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor.

Stalking occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Sexual exploitation occurs when someone takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation for purposes of this policy include but are not necessarily limited to:

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- ~~Prostituting another person;~~
- ~~Recording images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness without that person's consent;~~
- ~~Distributing images (e.g., video, photographs) or audio of another person's sexual activity, intimate body parts or nakedness if the person distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and~~
- ~~Viewing another person's sexual activity, intimate body parts or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.~~

~~**Unwelcome conduct** does not have to include intent to harm, be directed at a specific target or involve repeated incidents, and can involve persons of the same or opposite sex. Participation in conduct or the failure to complain does not always mean the conduct was welcome. The fact that a person has welcomed some conduct does not necessarily mean a person welcomed other conduct. Similarly, the fact that a person may have invited, requested or otherwise consented to conduct on one occasion does not necessarily mean the conduct is welcome on a later occasion.~~

Consent as used in this policy is defined as follows:

~~**Consent is *informed*.** Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.~~

~~**Consent is *voluntary*.** It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. So, a spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Assuming that consent was given by the absence of a "no" is wrong.~~

~~**Consent is *revocable*.** Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not~~

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sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the survivor was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

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TITLE IX COORDINATOR

B. CRIMINAL DEFINITIONS

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Section 304 of the Violence Against Women Reauthorization Act (VAWA), known as the SaVE Act provision, obligates MSU's policy to include the definitions used by Kentucky's penal code (KRS Chapters 500 to 534) for "domestic violence," "dating violence," "sexual assault," "stalking," and "consent" with respect to sexual offenses. Kentucky's penal code does not define domestic violence or dating violence, although other crimes may apply to those circumstances. Kentucky's penal code defines sexual abuse in lieu of sexual assault, stalking, and lack of consent, which are set forth below. Please note that the Kentucky penal code definitions are for your information only as required by federal law. For purposes of applying MSU's policy, the definitions in Part A will govern.

510.110 Sexual abuse in the first degree

(1) A person is guilty of sexual abuse in the first degree when:

- (a) He or she subjects another person to sexual contact by forcible compulsion; or
- (b) He or she subjects another person to sexual contact who is incapable of consent because he or she:
 - 1. Is physically helpless;
 - 2. Is less than twelve (12) years old;
 - 3. Is mentally incapacitated; or
 - 4. Is an individual with an intellectual disability; or
- (c) Being twenty-one (21) years old or more, he or she:
 - 1. Subjects another person who is less than sixteen (16) years old to sexual contact;
 - 2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
 - 3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the

person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

~~(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.~~

510.120 Sexual abuse in the second degree

(1) A person is guilty of sexual abuse in the second degree when:

~~(a) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or~~

~~(b) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.~~

~~(2) In any prosecution under subsection (1)(a) of this section, it is a defense that:~~

~~(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and~~

~~(b) The other person was at least fourteen (14) years old; and~~

~~(c) The actor was less than five (5) years older than the other person.~~

510.130 Sexual abuse in the third degree

~~(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.~~

~~(2) In any prosecution under this section, it is a defense that:~~

~~(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and~~

~~(b) The other person was at least fourteen (14) years old; and~~

~~(c) The actor was less than eighteen (18) years old.~~

508.130 Definitions for KRS 508.130 to 508.150

~~As used in KRS 508.130 to 508.150, unless the context requires otherwise:~~

~~(1) (a) To "stalk" means to engage in an intentional course of conduct:~~

~~1. Directed at a specific person or persons;~~

~~2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and~~

~~3. Which serves no legitimate purpose.~~

~~(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.~~

~~(2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.~~

~~(3) "Protective order" means:~~

~~(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;~~

~~(b) A foreign protective order, as defined in KRS 403.720 and 456.010;~~

~~(c) An order issued under KRS 431.064;~~

~~(d) A restraining order issued in accordance with KRS 508.155;~~

~~(e) An order of protection as defined in KRS 403.720 and 456.010; and~~

~~(f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.~~

508.140 Stalking in the first degree

~~(1) A person is guilty of stalking in the first degree,~~

~~(a) When he intentionally:~~

~~1. Stalks another person; and~~

~~2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:~~

~~a. Sexual contact as defined in KRS 510.010;~~

~~b. Serious physical injury; or~~

~~c. Death; and~~

~~(b) — 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or~~

~~2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or~~

~~3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or~~

~~4. The act or acts were committed while the defendant had a deadly weapon on or about his person.~~

508.150 Stalking in the second degree

- (1) A person is guilty of stalking in the second degree when he intentionally:
- (a) Stalks another person; and
 - (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - 1. Sexual contact as defined in KRS 510.010;
 - 2. Physical injury; or
 - 3. Death.

510.020 Lack of consent

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
- (a) Forceful compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
- (a) Less than sixteen (16) years old;
 - (b) Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;
 - (c) An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or mental illness;
 - (d) Mentally incapacitated;
 - (e) Physically helpless; or
 - (f) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- (4) The provisions of subsection (3)(f) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

TITLE IX COORDINATOR

~~MSU's Title IX Coordinator and Deputy Coordinators play the main role in carrying out MSU's commitment to provide a positive learning, teaching and working environment for the entire MSU community. By providing training on preventing sexual misconduct and retaliation, the Title IX Coordinator and Deputy Coordinators strive to maintain a safe campus and provide a good MSU experience for all.~~

~~The responsibilities and functions of the Title IX Coordinator and Deputy Coordinators are set out in this policy, but in general, the Title IX Coordinator and Deputy Coordinators receive and oversee MSU's response to reports and complaints that involve possible gender discrimination, including sexual misconduct, to monitor outcomes,~~

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~~identify and address patterns, and assess effects on the campus climate so MSU can address issues that affect the wider MSU community.~~

~~More specifically, the Title IX Coordinator and Deputy Coordinators monitor compliance with the reporting, complaint, investigation, hearing and appeals processes outlined in this policy. Upon a finding of prohibited sexual misconduct under this policy, the Title IX Coordinator and Deputy Coordinators determine whether campus-wide remedies are needed in response, including but not limited to revision of policies; increased monitoring, supervision or security; and increased education and prevention efforts. The Title IX Coordinator and Deputy Coordinators also review sanctions issued under this policy to ensure that they, along with any interim measures and long term measures taken, are reasonably calculated to stop the sexual misconduct and prevent its re-occurrence. The name, office and contact information for MSU's Title IX Coordinator and Deputy Coordinators are:~~

~~• Title IX Coordinator for MSU:~~

~~Human Resources Director~~

~~• Deputy Coordinators:~~

~~Deputy Coordinators are identified in the Appendix to this Policy and may change from time to time. The Appendix shall be revised to remain current and not require the amendment of this policy.~~

~~If any person has a question, complaint or concern he/she believes is covered by these policies and procedures or some other aspect of Title IX, he/she should contact either the Title IX Coordinator or one of the Deputy Coordinators. Reports of sexual misconduct can also be made to "Responsible Employees" as described in this policy. The Title IX coordinator has a responsibility to coordinate the University's efforts to comply with its obligations under Title IX, the Title IX regulations, this Policy and University Administrative Regulations. These responsibilities include coordinating any investigations of complaints received pursuant to Title IX and the implementing regulations and Policy.~~

~~The Title IX Coordinator, Deputy Title IX Coordinator and Title IX Investigators shall be appointed by the President and identified in the Appendix to this Policy.~~

REPORTING:

***Special reporting requirements for minors (individuals under 18 years old).** MSU **requires reporting** to the educational institution's Title IX Coordinator(s) **and** to either law enforcement or child protective services any sexual abuse of a minor by faculty, staff, volunteers and contractors affiliated with the institution.

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MSU strongly encourages persons who have experienced sexual misconduct, or knows of someone 18 years or older who has experienced sexual misconduct, to report the incident to MSU per this policy. Any person may report sex discrimination including sexual harassment whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment. The report may be made in person, by mail, by telephone or electronic mail using the contact information listed for the Title IX Coordinator, official of the University who has the authority to institute corrective measures on the University's behalf; or may be reported by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time including during nonbusiness hours by using the telephone number or electronic mail address or by mail to the office address listed for the Title IX Coordinator.

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In case of an emergency or ongoing threat, a survivor-victim should get to a safe location and call 911 or 606-783-2035. Calling 911 will put the caller in touch with local police. Calling 606-783-2035 will put the caller in touch with university police.

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Any official of the University who has the authority to institute corrective measures on the University's behalf and who has received information of alleged misconduct under this Policy shall notify and provide such to the Title IX Coordinator. University officials deemed to have such authority shall be designated pursuant to University Administrative Regulation.

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A. Responsible Employees

In addition to the Title IX Coordinator and Deputy Coordinators, MSU considers certain people to be "Responsible Employees" which means they are MSU employees who are required to report alleged sexual misconduct to the Title IX Coordinator or Deputy Coordinator. Victims are encouraged to speak with a Responsible Employee to make reports of sexual misconduct. The following persons are "Responsible Employees" under this policy: MSU's Title IX Coordinator, MSU's Deputy Title IX Coordinators, the President of MSU, Members of the President's Cabinet, General Counsel, fulltime President's Office staff, fulltime Provost's Office staff, Academic Deans and Chairs, Faculty, Dean of Students, and Leadership, the Director and Assistant Director of Residence Life, all Resident Hall personnel, the Athletic Director, Assistant Athletic Directors, Athletic Trainers, all Athletic Coaches, Human Resources Staff, Multicultural Affairs staff, Disability Services Coordinator, International student office staff, and Campus Police Officers.

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All employees are "responsible employees" required to report to the Title IX Coordinator and law enforcement or child protective services when the sexual abuse involves a minor.

Any member of MSU community can file a report with the Title IX Coordinator, Deputy Coordinators or Responsible Employees. If a survivor shares an incident of sexual misconduct with a Responsible Employee, he or she needs to know that it is the

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Responsible Employee's obligation to notify the Title IX Coordinator or Deputy Coordinator of the incident immediately.

BA. Reporting Timeframe

Any person may file a ~~complaint~~ report of sexual misconduct at any time. ~~Early~~ ~~Timely~~ reporting is encouraged to preserve evidence and provide the ~~survivor~~ ~~alleged victim and the respondent~~ with information regarding rights, options and resources available under this policy and federal/state laws. ~~Reporting of sexual abuse involving minors should take place immediately.~~

The Title IX Coordinator or Deputy Coordinator will provide ~~survivors~~ ~~alleged victims~~ of sexual misconduct and ~~respondents~~ with information about available support services and resources, and also assist ~~survivors~~ ~~alleged victims~~ in notifying law enforcement, including the local police, if ~~a survivor~~ ~~the person~~ elects to do so. ~~Survivors~~ ~~Alleged victims~~ are not required to report to area law enforcement in order to receive assistance from or pursue options within MSU. Reporting sexual misconduct to the police does not commit the ~~survivor~~ ~~alleged victim~~ to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the ~~survivor~~ ~~alleged victim~~ decides to proceed with criminal charges.

BC. Reporting Options

This section addresses options for reporting sexual misconduct. MSU may investigate sexual misconduct even without a formal complaint whenever it knows or there is reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

~~1. Official Report: Persons are required to make an official report of any incident of sexual misconduct involving a minor to the Title IX Coordinator or a Deputy Coordinator regardless of whether the incident occurred on or off campus. Persons are strongly encouraged to make an official report of any incident of sexual misconduct to the Title IX Coordinator or a Deputy Coordinator regardless of whether the incident occurred on or off campus. Official reports can be made directly to the Title IX Coordinator or a Deputy Coordinator via a written statement or an appointment. Official reporting initiates a course of immediate action. In cases where a complainant states he or she does not want to pursue a formal complaint, the ability of MSU to investigate may be limited. Even if a complainant does not want to pursue an investigation, under some circumstances the Title IX Coordinator or Deputy Coordinator may have a legal obligation to investigate a complaint, such as when there is a risk to the campus community if the accused remains on campus. When determining whether to go forward with an investigation, the Title IX Coordinator or Deputy~~

Coordinator may consider factors such as the seriousness of the allegation, the age of the complainant, whether there have been other complaints or reports against the accused, and the rights of the accused to receive information about the complainant and the allegations if a hearing and possible sanctions may result from the investigation.

If a person is required to report because of involvement of a minor or decides to make an official report involving students 18 & over, faculty, staff, volunteers or contractors, a detailed (written, typed, emailed, or handwritten) statement of the alleged incident(s) should be submitted to the Title IX Coordinator or Deputy Coordinator. This formal statement should be signed and dated. The statement should be as specific as possible, including dates, times, locations, a description of the alleged misconduct and the name(s) of the accused person(s), and further provide a list of any person(s) who may have information that would be helpful to the investigation and review. The Title IX Coordinator or Deputy Coordinator will promptly investigate all formal reports.

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21. Confidential Disclosure: Despite MSU's strong interest in having persons report complaints of sexual misconduct, it is understood that not everyone is prepared to make an official report to MSU. Help may be sought from certain resources that are not required to reveal private, personally identifiable information unless there is cause for fear for the survivor's safety or the safety of others. If a person desires that details of the incident be kept confidential, contact should be made with counselors or other providers who can maintain confidentiality, such as the Caudill Health Clinic. Such professionals generally are not legally required to report personally identifiable information given in confidence unless given permission or unless the allegations involve a minor. If the survivor chooses not to pursue a judicial process option (e.g., criminal charges), generally no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual misconduct to counselors, clergy or other providers who can legally maintain confidentiality should discuss whether to have that counselor, advocate or provider report the misconduct to MSU and request interim measures required by Title IX, or request discretionary support measures from MSU without reporting the nature of the conduct.

22. Requests via a Counselor, Clergy or other Provider: A ~~survivor-victim~~ may have his/her counselor, clergy or other provider who can legally maintain confidentiality request interim measures from MSU on the ~~survivor-s-victim's~~ behalf. The request may trigger MSU's obligation to investigate. To the extent a counselor, clergy or other provider makes a disclosure but, consistent with the ~~survivor-s-victim's~~ wishes, asks MSU not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinators will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the ~~survivor-victim~~ as needed.

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DC. Required Confidentiality

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The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Education Rights & Privacy Act and regulations, or as required by law or to carry out Title IX including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

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Reports and personal information will be kept as confidential as possible to the extent the law allows and to the extent confidentiality is consistent with MSU's need to protect the safety of the MSU community. Complete confidentiality cannot be promised as MSU will need to thoroughly investigate the case, and may need to share some information with relevant administrators of MSU in order to further protect and prevent incidents. Reports to law enforcement may be shared with MSU's Title IX Coordinator or Deputy Coordinators. MSU may be required by law to publish non-identifying information in campus crime statistics.

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All MSU employees (with the exception of those who may be bound by confidentiality laws or privileges such as counselors) must share all reports of sexual misconduct with the Title IX Coordinator or a Deputy Coordinator so the matter may be investigated and a determination made whether steps are needed to ensure the safety of the MSU community.

It is the survivor's choice as to whether he/she participates in an investigation; however, MSU may proceed with an investigation without the survivor's participation.

ED. Drug, and Alcohol and other Code of Conduct Amnesty

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MSU offers amnesty (immunity) to students who may have violated MSU's policies concerning the use of drugs and/or alcohol and other student code of conduct violations at the time of the incident when he or she became a ~~survivor~~ victim of, a respondent or witnessed, sexual misconduct. Therefore, no MSU alcohol or drug charges or other code of conduct violation for involvement in or reporting shall be made if the violation does not involve sex discrimination or sexual harassment but arises out of the same facts or circumstances as a report, complaint or formal complaint of sexual harassment. ~~are applied to a student who reports that he or she was under the influence of alcohol and/or drugs at the time of a sexual misconduct incident.~~

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The purpose of this section is to encourage reporting. ~~Survivors~~ Alleged victims or bystanders (witnesses) should not let their use of alcohol or drugs or other code of conduct violations deter them from reporting an incident. When conducting the investigation, MSU's primary focus will be addressing the sexual misconduct violation and not ~~alcohol/drug use~~ other violations that may be discovered or disclosed. However, MSU

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may provide referrals to counseling and may require educational ~~options programming~~ on drugs and alcohol, rather than disciplinary sanctions, in such cases.

WRITTEN NOTICE OF RIGHTS AND OPTIONS

Any person who reports an incident of sexual misconduct, regardless of whether the incident occurred on or off campus, shall receive a written explanation of his/her rights and options as provided for under this policy. These rights and options include the right(s) of a survivor to:

- ~~File a domestic abuse or dating violence complaint in court requesting an order restraining the attacker from further abusing, and/or an order directing the attacker to leave the victim's household, building, school (including MSU) or workplace.~~
- ~~Seek a criminal complaint for threats, assault and battery, or other related offenses.~~
- ~~Seek medical treatment (the police will arrange transportation for the victim to be transported to the nearest hospital or otherwise assist the victim in obtaining medical treatment if the victim desires).~~
- ~~Request the police remain at the scene until the victim's safety is otherwise ensured.~~
- ~~Request that a police officer assist the victim by arranging transportation to a safe place, such as a shelter or a family or friend's residence.~~
- ~~Obtain a copy of the police incident report at no cost from the police department.~~

PROCEDURES SURVIVORS SHOULD FOLLOW

If an incident of sexual misconduct occurs, it is important to preserve evidence so that successful criminal prosecution remains an option.

The survivor of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a survivor has removed the clothing he or she was wearing during the assault prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and taken to the hospital when treatment is sought. If the survivor is still wearing the clothes that he or she was wearing during an assault, he or she should bring a change of clothes with him or her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime.

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~~Evidence of violence, such as bruising or other visible injuries following an incident of sexual assault, should be documented by photographs. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the stalker, should be saved and not altered in any way.~~

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INTERIM AND SUPPORTIVE MEASURES AND ACCOMMODATIONS

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~~The Title IX Coordinator or Deputy Coordinator has the right to determine which, if any, supportive measures should be issued in an individual case. Such measures are designed to restore or preserve access to the University's education program or activity, without unreasonably burdening the other party. Supportive measures shall be available to complainants and respondents equitably. The measures shall protect the safety of all parties and the University's educational environment including deterring sexual harassment. Supportive measures shall be kept confidential except as necessary to facilitate enforcement.~~

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~~The Title IX Coordinator or Deputy must promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes as to the measures. The complainant shall be advised that supportive measures are available whether or not a formal complaint is filed. Additionally, the Title IX Coordinator/Deputy shall explain to the Complainant the process for filing a formal complaint.~~

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~~The Title IX Coordinator/Deputy shall similarly advise the respondent as to the availability of supportive measures and consider the respondent's wishes as to same.~~

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~~Supportive measures may include but are not limited to changes in class schedules; living or working arrangements; safety escorts; parking arrangements; dining arrangements; no contact orders and resources for professional counseling.~~

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~~The University may remove a respondent from any of its education programs and/or activities on an emergency basis. The University must undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.~~

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~~For a respondent who is a student, the Title IX Coordinator/Deputy may recommend to the Dean of Students that the student respondent be removed from an education program and/or activity. The Dean may issue the removal notice based upon the above criteria. The notice may initially be issued verbally, by email or other electronic means or in writing by in person or mail delivery. If the initial notice is not in writing, a written notice shall be issued as soon as possible. The notice shall state the removal parameters and the specific reason for the decision. The notice shall also provide the respondent the right to challenge the removal immediately by requesting an in person hearing with the Dean. The respondent may present his/her position orally and/or in writing and may be represented at the hearing.~~

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For an employee, the Title IX Coordinator/Deputy may recommend to the employee's Vice President that the employee be placed on administrative leave during the pendency of the investigation. The Vice President may issue the leave order and provide written notice, or verbal notice followed by written notice, to the employee.

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MSU shall enforce any orders of protection issued by a court. If any member of the MSU community obtains an order of protection or restraining order, he/she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide a copy of that order. A copy of the order shall also be provided to MSU Police.

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ADVISORS

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A party may be accompanied by an advisor of the party's choice at any related meeting or proceeding. The advisor may or may not be an attorney except as provided by law. The advisor may consult with the party but may not speak for the party.

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Notwithstanding the above, the advisor shall be allowed to be at the hearing to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

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If a party does not otherwise have an advisor, at the time of the hearing the University must provide without fee or charge to the party, an advisor of the University's choice to conduct cross examination on behalf of that party.

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CONFLICT OF INTEREST

The University requires that no Title IX Coordinator/Deputy, investigator, decision maker, or any person designated to facilitate an informal process may have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent.

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INFORMAL RESOLUTION

At any time after a formal complaint has been filed, but prior to a determination regarding responsibility, an informal resolution process may be utilized to resolve a complaint. The University may facilitate the informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Either party may request informal resolution, or the Title IX Coordinator/Deputy or the Investigator may suggest the informal process to the parties. The University will use its best efforts to conduct the informal resolution within ten (10) days of agreement to enter into the process.

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Both parties shall sign a voluntary written consent to participate in the informal resolution process. The parties shall be provided a written notice setting forth the

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allegations and the requirements of the informal resolution process and notice of finality of the resolution. At any time prior to a signed written resolution agreement, a party has the right to withdraw from the informal resolution process and resume the formal complaint process. Once the written resolution agreement is signed by both parties, they are both precluded from resuming the processing of the formal complaint arising from the same allegations. The parties shall further be given written notice of any resolution records that will be maintained or could be shared.

The informal resolution process may not be offered or facilitated to resolve allegations that an employee sexually harassed a student.

The Title IX Coordinator and Deputy Coordinators have the right to take necessary measures to protect a person's rights and personal safety. Therefore, interim measures will be available to protect persons from any kind of retaliation or threatening situations during and after the investigation process. These measures include but are not limited to changes in class schedules, living or working arrangements; safety escorts; parking arrangements; dining arrangements; and resources for professional counseling. Regardless of whether a person reports an incident of sexual misconduct to law enforcement or pursues any formal action, if a report of such an incident is made to MSU, MSU is committed to providing a victim a learning or working environment that is as safe as possible.

The Title IX Coordinator or Deputy Coordinator determines which measures are appropriate for survivors on a case by case basis. Upon receiving a report of sexual misconduct, the Title IX Coordinator or Deputy Coordinator will ask the survivor or his/her counselor, provider or advocate what interim measures, if any, are sought. If the survivor or his/her counselor, provider or advocate identifies an interim measure that is not already provided by MSU, the Title IX Coordinator or Deputy Coordinator will consider whether the request can be granted. In those instances where interim measures affect both a survivor and the accused, the Title IX Coordinator or Deputy Coordinator will minimize the burden on the survivor wherever appropriate.

When a survivor's off campus counselor, provider or advocate seeks any of the above listed interim measures without disclosing that sexual misconduct is the basis for the request, the Title IX Coordinator or Deputy Coordinator will consider the request consistent with its general policy of allowing counselors, providers and advocates to seek such measures for survivors of trauma without requiring that the nature of trauma be disclosed.

MSU is also committed to ensuring that orders of protection issued by courts are upheld on all MSU-owned, used and controlled property, as well as properties immediately adjacent to MSU. Therefore, if any member of MSU community obtains an order of protection or restraining order, he/she should promptly inform the Title IX

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Coordinator or Deputy Coordinator and provide him/her with a copy of that order so MSU can enforce it. MSU is also committed to protecting survivors from further harm, and if the Title IX Coordinator or Deputy Coordinator determines that an person's presence on campus poses a danger to one or more members of MSU community, he/she can issue an institutional "No Contact" or "No Trespass" order barring that person from MSU property.

INVESTIGATION AND HEARING PROCESS

MSU's Title IX Coordinator/~~or~~ Deputy and/or investigators ~~Coordinator will shall~~ investigate ~~all~~ alleged violations of this policy ~~regardless of whether the conduct is alleged to have occurred on-campus or off-campus~~. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process ~~may shall~~ include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence, ~~as appropriate~~. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss his/her involvement in the reported incident. ~~Allegations of sexual misconduct will not be referred to informal mediation. It is presumed~~ the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the policy's process.

Notice of Allegations. Upon receipt of a formal complaint, the University must provide the following written notice to the parties who are known:

- Notice of the University's Title IX process including notice of the informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Sufficient details include the identities of the parties involved in the incident, if known, conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX process;
- Notice that the parties may have an advisor of the party's choice, who may be but is not required to be, an attorney, except as provided by law;
- Notice of rights of inspection and review of evidence;
- Notice of any student conduct code provision prohibiting knowingly making false statements or knowingly submitting false information during the grievance process.

If in the course of an investigation the Title IX Coordinator/Deputy and or investigators decide to investigate allegations about the complainant or respondent that are not

included in the Notice of Allegations previously provided, the University must provide notice of the additional allegations to the parties whose identities are known.

Dismissal of a Formal Complaint. The University must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the University's code of conduct.

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The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a required or permitted dismissal, the University must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties including rights of appeal.

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Consolidation of Formal Complaints. The University may consolidate formal complaints as to the allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

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Investigation of a Formal Complaint. When investigating a formal complaint and throughout the investigative process the University must:

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- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties provided that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains the party's voluntary, written consent to do so for the investigative and hearing process.
- Provide an equal opportunity for the parties' witnesses, including fact and expert, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

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- Provide the parties with the opportunity to have an advisor throughout the investigative process as provided in this policy.
- Provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity.

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MSU will use best efforts to complete the investigation within ninety (90) calendar days from receipt of a report. Limited extensions of all timeframes may be granted for good cause with written notice to the complainant and the respondent for the reason of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

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Investigative Report. The University shall create an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to a hearing, the report shall be sent to each party and the party's advisor, if any. The report shall be in an electronic format or hard copy for the parties' review and written responses.

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HEARING AND APPEAL OFFICERS

Post investigative hearings and appeals conducted pursuant to this policy shall be conducted by a hearing or appeals officer as provided through University Administrative Regulation. The officers shall be trained pursuant to this policy and may be university employees or hired through contract.

The Title IX Coordinator/Deputy shall assign officers to hearings and appeals.

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HEARING PROCESS

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~~If the investigation concludes that evidence exists to suggest that a violation of this policy more likely than not occurred, If a case has not been dismissed or resolved in the informal process, the Title IX Coordinator/ or Deputy, Coordinator upon completion of or~~

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receipt from an investigator of an investigative report, will refer the case for a live hearing, before MSU's Sexual Misconduct Hearing Panel which consist of five members of the Sexual Harassment Hearing Board chosen by the Title IX Coordinator or a Deputy Coordinator designated by the Title IX Coordinator. The MSU General Counsel or his/her designee shall serve as legal advisor to the Sexual Misconduct Board and the Hearing Panel.

The Title IX Coordinator/Deputy shall provide the parties the name of the hearing officer. The parties shall have seven days to provide in writing to the Title IX Coordinator any objection to the officer due to bias which shall be specifically set forth.

The Sexual Misconduct Hearing Board shall be appointed annually by the President and shall consist of no less than five faculty members, five staff members and three students. If vacancies exist during the school year, the President may appoint a person of the appropriate category to fill the vacancy. Members may be reappointed from year to year at the President's pleasure. The President may request names from the Faculty Senate Chair, the Staff Congress Chair and the Vice President for Student Affairs to consider for appointment to the panel from their constituencies. All panel members must attend Sexual Misconduct Hearing Board training as designated by the Title IX Coordinator in order to serve on the Board.

If a hearing involves a student, at least one member of the Hearing Panel selected to hear the case shall be a student, and at least one faculty member and one staff member shall serve on the panel. If a faculty member is involved in the case, at least three faculty members shall be selected to serve on the panel hear the case. If a staff member is involved in the case, at least two staff members shall be selected to the panel. The Title IX Coordinator or a designated Deputy Title IX Coordinator shall select one of the five chosen panel members to serve as the panel chair for the case. In the event of a conflict of interest, a Hearing Panel member will recuse himself/herself from the Panel, and the Title IX Coordinator or designee shall appoint a new panel member to serve.

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at the hearing. Each party shall submit to the Title IX Coordinator and to all other parties a list of all witnesses the party may call at the hearing and a copy of all exhibits to be introduced.
- The right to access information and evidence directly related to him/her within a reasonable time before the hearing.
- The right to attend the hearing and speak on his/her own behalf. Invoking the right not to speak will not be considered an admission of responsibility.
- The right to have an advisor as set forth in this policy.

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- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other. Cross examination shall only be conducted by a party's advisor.

- The right to have an advisor of his/her choice present at the hearing. Advisors may not directly participate in the hearing.

- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other. Such questions may be supplied to the chair who may ask the question.

- The panel members hearing officer may ask questions of the witnesses at the hearing.

Hearings will be closed to the public. Hearings shall be recorded, by video, audio, or transcript with a copy of same made available to both parties for inspection and review. and Testimony shall be sworn. The Title IX Coordinator may accommodate concerns for the personal safety, well-being and/or fears of participants during the hearing by providing separate facilities, by using a visual screen and/or by permitting participation by telephone, video conference or other means as appropriate.

Live hearings may be conducted with all parties physically present in the same geographic location. At the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions.

The hearing officer shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant direct questions and cross examination may be asked of a party or witness. Prior to a party or witness answering a question, the hearing officer shall determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the

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questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Evidence that does not rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, shall not be admitted at the hearing unless the person holding such privilege has waived the privilege.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statements of that party or witness in reaching a determination regarding responsibility.

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The hearing officer shall not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

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Following a hearing, the hearing officer must issue a written determination regarding responsibility. The hearing officer shall ~~the Sexual Misconduct Panel will deliberate and~~ determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred (preponderance of evidence). If it is found a violation occurred, remedies must be designed to restore or preserve equal access to the University's education program and/or activities. Possible hearing outcomes for students include, but are not limited to, changes to class schedules; changes to living arrangements; limitations on participation in activities, community service, suspension, separation or expulsion from MSU; ~~and for all reporting the incident to the local police.~~ Faculty and staff, among other possible remedies, may be formally reprimanded, be limited in participation in academic and campus activities, suspended without pay, or removed from employment. The measure taken will depend upon the individual circumstances.

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The hearing officer's written determination must include:

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- Identification of the allegations potentially constituting sexual harassment under this policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the party, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's policies and regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A description of the disciplinary sanctions, if any;
- A statement of any remedies to restore or preserve equal access to the University's education program and/or activities; and
- The University's procedures and permissible basis for the parties to appeal.

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The Title IX Coordinator will inform both parties simultaneously in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. ~~Notice of the outcome will include key findings and any penalties or protective measures directly related to the party.~~ If the measure taken by the ~~Sexual Misconduct Panel~~ hearing officer includes suspension or removal of a faculty or staff member, the Title IX Coordinator will also forward the decision to the President. If the measures involve a student, the outcome will be reported to the Vice President for Student ~~Affairs~~ AffairsLife.

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The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

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The Title IX Coordinator is responsible for effective implementation of any remedies.

~~As a general rule, MSU will complete the investigation and hearing process within sixty (60) calendar days from receipt of a report. However, MSU may extend that time frame under special circumstances such as complex cases requiring extensive investigation and breaks between academic periods making relevant parties or officials unavailable. MSU will work to keep extensions to a minimum and will keep the parties informed of the status of their case.~~

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~~Survivors always have the option to file a criminal report in addition to or in lieu of a report under this policy. In no case should a survivor be dissuaded from reporting sexual misconduct to law enforcement. Regardless whether a survivor elects to file a criminal report, MSU will conduct a separate investigation of its own consistent with this policy. If the accused is not affiliated with MSU, an investigation will still be conducted. The Title IX Coordinator or Deputy Coordinator may issue a No Contact or No Trespass order to an accused unless and until the accused is found not responsible. If the accused is a student or faculty from a visiting institution, MSU reserves the right to contact that institution for further investigation.~~

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~~Throughout the process, arrangements will be made to prevent the parties from having direct contact or communication with each other.~~

~~The Title IX Coordinator will keep a record of the hearing and investigation process for each case.~~

APPEAL PROCESS

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An appeal may be filed from either dismissal of a formal complaint or any individual allegations of the complaint or from a decision of the hearing officer.

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Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome (including punishment). ~~to MSU Appeals Board, which will consist of three members of the Sexual Misconduct Hearing Board that have not served on the case. If a case involves a student, at least one member of the Appeals Board shall be a student and likewise with Faculty and Staff.~~⁴ Appeals must be received by the Title IX Coordinator no later than ~~five (5) ten (10) business calendar days~~ after the date the underlying decision is issued ~~to both parties~~. Appeals received after the deadline will not be processed. Appeals should be marked "confidential" and submitted by hand delivery or by email or mail to the Title IX Coordinator. ~~The appeal shall state with particularity the basis therefor.~~

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Both parties will be notified in writing by the Title IX Coordinator that an appeal was received. ~~The notice shall include the basis for the appeal. Both parties shall have ten (10) days from the date of the notice to submit a written statement to the Title IX Coordinator in support of, or challenging, the outcome. A copy of the statement shall be provided by the Title IX Coordinator to the other party.~~

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~~The Title IX Coordinator/Deputy shall provide the parties the name of the Appeals Officer. The parties shall have seven (7) days to provide in writing to the Title IX Coordinator/Deputy any objection to the appeals officer appointed due to bias on behalf of the officer which shall be specifically stated.~~

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~~After the statements have been received, or the time to file the statements has run, the time for objection to the appeals officer has expired, and the record for appeal is assembled, the Title IX Coordinator shall submit the appeal to the Appeals Officer. The burden of proof lies with the appellant.~~

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MSU Appeals ~~Board Officer~~ will assess and decide the appeal based on ~~the the investigation and hearing record from the previous levels~~ within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the Title IX Coordinator will advise the parties of the need for more time. ~~For appeals of dismissal or partial dismissal of a formal complaint, the record shall consist of the full case record of the complaint. Appeals following a hearing, shall consist of the hearing record and exhibits considered by the hearing officer.~~ Grounds for appeal are limited to the following:

- ~~MSU made a procedural error, which could have significantly affected the outcome.~~
- ~~New evidence has been discovered that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.~~

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⁴ ~~In the event of a conflict of interest, the board member who has the conflict will recuse himself/herself from the committee and the Title IX Coordinator (or designee) will appoint a replacement.~~

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- Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents. Sanction involving suspension without pay, may be appealed to the President. The President shall review the record and determine whether suspension or dismissal is appropriate. The decision of the President shall be final if he/she determines removal is appropriate, he/she shall refer the case to the Board of Regents who shall review the case on the record de novo. The Board may either remove the faculty member or may determine if a lesser penalty is appropriate. The decision of the Board shall be final.
- Sanctions which include suspension or dismissal of a staff member which may be appealed to the President who will review the record and determine if dismissal or another penalty is appropriate. The President's decision shall be final.
- Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents in the same manner as provided by the MSU Eagle Student Handbook for Student Disciplinary Committee decisions.

The Title IX Coordinator will notify the parties simultaneously of the outcome of the appeal. All decisions by MSU Appeals Board-Officer are final with the exception of the following:

- The Title IX Coordinator/Deputy, investigator(s), or hearing officer, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. Such objection must have been previously raised in a timely manner by the party.
 - The penalties imposed or other protective measures taken are too severe based on the evidence of record.
 - The Appeals Officer, shall issue a written decision describing the result of the appeal and the rationale for the result.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.

Previously unavailable and relevant evidence was found that could impact the final result.

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The Title IX Coordinator will keep a record of the appeal process.

Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents. Sanction involving suspension without pay, may be appealed to the President. The President shall review the record and determine whether suspension or dismissal is appropriate. The decision of the President shall be final if he/she determines removal is appropriate, he/she shall refer the case to the Board of Regents who shall review the case on the record de novo. The Board may either remove the faculty member or may determine if a lesser penalty is appropriate. The decision of the Board shall be final.

Sanctions which include suspension or dismissal of a staff member which may be appealed to the President who will review the record and determine if dismissal or another penalty is appropriate. The President's decision shall be final.

Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents in the same manner as provided by the MSU Eagle Student Handbook for Student Disciplinary Committee decisions.

The Title IX Coordinator will notify the parties simultaneously of the outcome of the appeal. All decisions by MSU Appeals Board-Officer are final with the exception of the following:

- The Title IX Coordinator/Deputy, investigator(s), or hearing officer, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. Such objection must have been previously raised in a timely manner by the party.
 - The penalties imposed or other protective measures taken are too severe based on the evidence of record.
 - The Appeals Officer, shall issue a written decision describing the result of the appeal and the rationale for the result.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.

Previously unavailable and relevant evidence was found that could impact the final result.

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~~NO RETALIATION OR DETERRENCE FOR FILING REPORTS~~NO RETALIATION OR DETERRENCE FOR PARTICIPATION IN THE TITLE IX PROCESS

~~MSU strictly prohibits retaliation for making a report under this policy or participating in an investigation or hearing under this policy. Examples of retaliation include, but are not limited to, a face to face threat, a digital message and/or physical intimidation. Retaliation can be by someone other than the accused. Any person who feels they have been retaliated against as a result of a report under this policy should contact the Title IX Coordinator or a Deputy Coordinator immediately.~~

~~Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privileges secured by Title IX or its regulations. This protection shall include reporting, filing a complaint, testifying, assisting, participating or refusing to participate in any manner in an investigation, proceeding or hearing under this policy. Retaliation includes intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX or its regulations.~~

~~Retaliation does not include the exercise of rights protected by the First Amendment to the U.S. Constitution. Likewise, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy, does not constitute prohibited retaliation. However, the fact of a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.~~

~~Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.~~

~~DISSEMINATION OF POLICY AND INFORMATION~~

~~The University shall notify applicants for admission and employment as well as current students of the title, office address, electronic mail address, and telephone number of the Title IX Coordinator and Deputy Coordinator.~~

~~Notification that the University does not discriminate on the basis of sex in education programs and activities shall be made to applicants for admission and employment as well as students. The notice shall advise that the University is required by Title IX and regulations thereunder not to discriminate and that these requirements extend to admission and employment. The notification shall further provide that inquiries as to~~

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the application of Title IX and regulations thereunder may be referred to the University's Title IX Coordinator, the Assistant Secretary of Education or both.

The University shall prominently display contact information for the Title IX Coordinator and this policy on the University's website and in all handbooks and catalogs made available to current students and applicants for admission and employment.

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RECORDKEEPING

The University must maintain the following records for a period of no less than seven years:

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1. Each sexual harassment investigation, including any determination regarding responsibility, and any audio or audiovisual recording or transcript of a hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;
2. Any appeal and decision;
3. Any informal resolution and result therefrom;
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. The University shall make these training materials publically available on its website.

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For each response to a formal complaint, the University shall create and maintain for a period of no less than seven years, records of any actions including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational program and/or activity. If no supportive measures are provided the complainant, then the University shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The University may continue to update additional explanations and/or detail additional measures taken.

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RESOURCES

~~Numerous resources both on and off campus are available and shall be set forth in the Appendix to this policy. The resources shall be updated as appropriate without necessity to amend this policy.~~

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TRAINING AND EDUCATION

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All students, faculty, ~~and staff and others as designated by the title IX Coordinator~~ must complete MSU-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator as frequently as designated by the President. ~~This shall include training as relates to minors on campus and reporting of abuse.~~ Failure to do so may result in corrective action.

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The University must ensure that the Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education program and activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. The University must ensure that decision makers receive training on any technology to be used at a live hearing, on issues of relevance, of questions of evidence, including when questions and evidence about the complainants sexual predisposition or prior sexual behavior are not relevant. The University also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

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Materials used to train Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

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RESOURCES

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Numerous resources both on and off campus are available and shall be set forth in the Appendix to this policy. The resources shall be updated as appropriate without necessity to amend this policy.

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~~All faculty and staff must complete training on how to identify and report sexual misconduct with minors.~~

~~Volunteers, camp staff and contractors with direct unsupervised contact with minor(s) or going on any overnight events, regardless of whether the minor is an MSU student or a participant in MSU-sponsored programs/activities, must submit to a background check for a complete history of criminal and/or child abuse. They must also complete MSU-sponsored training on sexual misconduct and how to identify and report sexual misconduct with minors within the dates and times arranged by the Title IX Coordinator or the Director of EHS, Risk Management & Insurance BEFORE they may commence activities. Please allow for up to 30 days for completion of background checks and training.~~

Both the background check and training must be completed annually for all volunteers, camp staff and contractors. Faculty & Staff must request annually and verify that all volunteers, camp staff and contractors with direct unsupervised contact with minors have completed the annual training and passed the background check before allowing them to participate in the event/program. Failure to do so may result in corrective action.

Training will, at minimum, cover the following:

- MSU policies and procedures for reporting and addressing sexual misconduct;
- Reminders that MSU prohibits the offenses of domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definitions for domestic violence, dating violence, sexual assault, sexual exploitation and stalking;
- The definition of consent and “welcome” conduct;
- Training on safe and positive options for bystander intervention that may be carried out by an person to prevent harm or intervene when there is a risk of sexual misconduct against a person other than such person;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding sexual misconduct;
- Procedures survivors should follow if sexual misconduct has occurred;
- Procedures for institutional disciplinary action in cases of alleged sexual misconduct;
- Information about existing counseling, health, mental health, survivor advocacy, legal assistance, and other services available for survivors both on-campus and in the community; and
- Information about survivor options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the survivor and if such accommodations are reasonably available, regardless of whether the survivor chooses to report the crime to campus police or local law enforcement;

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~~In addition, MSU provides informational resources such as crime bulletins and alerts and bulletin board campaigns.~~

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APPENDIX

~~REPORTING RESOURCES~~

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~~Title IX Coordinators~~

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~~Harold Nally~~

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~~304-301 Howell McDowell Administration Building~~

~~Morehead, KY 40351~~

~~(606)-783-2097~~

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~~titleixcoordinator@moreheadstate.edu titleix@moreheadstate.edu~~

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~~Deputy Title IX Coordinator~~

~~Lora Pace~~

~~217 ADUC~~

~~Morehead, KY 40351~~

~~606-783-2517 titleix@moreheadstate.edu~~

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~~Lora Pace~~

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~~217 Adron Doran University Center~~

~~(606)-783-2517~~

~~Assistant Title IX Coordinators~~

~~Investigators~~

~~Richard Fletcher~~

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~~186 Academic Athletic Center~~

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606-783-5136

William Grise
105C Lloyd-Cassity Bldg.
606-783-2424

Sara Larson
307 Allie Young Hall
606-783-9453

Dr. Robert Royer
307D Breckinridge Hall
606-783-2734

Richard Fletcher
186 Academic Athletic Center
(606) 783-5136

~~William Grise~~
~~105C Lloyd-Cassity Building~~
~~(606) 783-2424~~

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~~Sara Larson~~
~~307 Allie Young Hall~~
~~(606) 783-9453~~

~~Dr. Robert Royer~~

RESOURCES

Health

MSU Health Clinic (606) 783-2055
112 Allie Young Hall
Morehead, KY 40351

St. Claire Regional Medical Center
222 Circle Drive (606) 783-6500 (Emergency Department)
Morehead, KY 40351

Mental Health/Counseling/Advocacy

MSU Counseling Center (606) 783-2123
112 Allie Young Hall
Morehead, KY 40351
After hours, evenings, weekends contact (606) 783-2035

This is the MSU Police Dept. and they have the on-call schedule for licensed counselors

St. Claire Regional Medical Center (606) 783-6805
Counseling
475 Clinic Drive
Morehead, KY 40351

Pathways (606) 784-4161 ext. 4401
321 East Main Street
Morehead, KY 40351

Pathways Rape Crisis Center (606) 784-4161 ext. 4401
325 East Main Street (800) 562-8909
Morehead, KY 40351

DOVES of Gateway, Inc. (606) 784-6880
P.O. Box 1012 (800) 221-4361 (Crisis #)
Morehead, KY 40351

KCADV (502) 209-5382
Kentucky Coalition Against Domestic Violence
111 Darby Shire Circle
Frankfort, KY 40601

24-hour Crisis Line (800) 273-8255

National Domestic Violence Hotline (800) 799-SAFE

National Sexual Assault Hotline (800) 656-HOPE

~~307D Breckinridge Hall~~
~~(606) 783-2734~~

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Police Department Contacts

MSU Police Department
(606) 783-2035 or 911 on campus
100 Laughlin Bldg.
Morehead, KY 40351

Morehead Police Department (606) 784-7511
105 East Main Street
Morehead, KY 40351

Kentucky State Police (Post 8) (606) 784-4127
1595 Flemingsburg Road
Morehead, KY 40351

Kentucky Child Protection Branch

~~** To report child abuse of a minor to Kentucky Child Protection Services, call this toll free number:~~

~~(877) 597-2334 or (877) KYSAFE1~~

VICTIM RESOURCES

Health

~~MSU Health Clinic (606) 783-2055
112 Allie Young Hall
Morehead, KY 40351~~

~~St. Claire Regional Medical Center
222 Circle Drive (606) 783-6500 (Emergency Department)
Morehead, KY 40351~~

Mental Health/Counseling/Advocacy

~~MSU Counseling Center (606) 783-2123
112 Allie Young Hall
Morehead, KY 40351~~

~~After hours, evenings, weekends contact (606) 783-2035
This is the MSU Police Dept. and they have the on call schedule for licensed counselors~~

~~St. Claire Regional Medical Center (606) 783-6805
Counseling
475 Clinic Drive
Morehead, KY 40351~~

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~~Pathways (606) 784 4161 ext. 4404
321 East Main Street
Morehead, KY 40354~~

~~Pathways Rape Crisis Center (606) 784 4161 ext. 4404
325 East Main Street (800) 562-8909
Morehead, KY 40354~~

~~DOVES of Gateway, Inc. (606) 784 6880
P.O. Box 1012 (800) 221 4361 (Crisis #)
Morehead, KY 40354~~

~~KCADV (502) 200 5382
Kentucky Coalition Against Domestic Violence
411 Darby Shire Circle
Frankfort, KY 40604~~

~~24-hour Crisis Line (800) 273-8255
=
National Domestic Violence Hotline (800) 799-SAFE
=
National Sexual Assault Hotline (800) 656-HOPE~~

~~Child & Adult Abuse Hotline (800) 752-6200~~

Disability Services

~~MSU Office of Disability Services (606) 783-5188
204E Adron Doran University Center
Morehead, KY 40354~~

Housing

~~DOVES of Gateway, Inc. (606) 784-6880
P.O. Box 1012 (800) 221 4361 (Crisis #)
Morehead, KY 40354~~

~~Gateway Homeless Shelter (606) 784 2668
695 Flemingsburg Road
Morehead, KY 40354~~

~~Morehead Housing Authority (606) 784-4314
220 Northstar Pl.
Morehead, KY 40354~~

Kentucky Housing Corporation (502) 564 7630
1231 Louisville Road (502) 564 7630 x265 Español
Frankfort, KY 40601-6191 (800) 633-8896 Toll Free

Legal Services

Northeast Legal Services, Inc. (606) 784 8924
320 East Main Street
Morehead, KY 40351

Legal Aid of the Bluegrass (606) 784 8924
546 E. Main St. #1
Morehead, KY 40351

Education

Adult Learning Center (606) 783-2871
627 E. Main St.
Morehead, KY 40351

Maysville Community & Technical College (859) 234 8626
Rowan Campus
400 Rocky Adkins Tech. Dr. Morehead, KY 40351

Morehead State University (606) 783 2000
Office of Enrollment Services
100 Admissions Center
Morehead, KY 40351

Online Resources

If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

National Domestic Violence Hotline

| <http://www.thehotline.org/>

| Stalking Resource Center

| <http://www.victimsofcrime.org/our-programs/stalking-resource-center>

| National Sexual Assault Hotline

| <http://www.rainn.org/get-help/national-sexual-assault-online-hotline>

| Girls Health Website

| <http://www.girlshealth.gov/safety/saferelationships/daterape.html>

| Clery Center for Security on Campus

| <http://clerycenter.org/help-victims>

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Morehead State University

Policy: PG- 6

Subject: Title IX Sexual Misconduct

Approval Date: 07/01/85

Revision Date: 04/30/93; 09/15/05; 09/24/15; 02/27/20; 8/06/20

PURPOSE:

Morehead State University is committed to complying with Title IX and related laws. This policy is adopted to prevent, investigate and respond to incidents of sexual misconduct, including sexual harassment, sexual assault, domestic violence, dating violence, and stalking in violation of Title IX. These guidelines apply to all members of the University community. The University will respond promptly to reports of sexual misconduct in a manner that is not deliberately indifferent.

APPLICATION:

This policy applies to all faculty, staff, students, affiliates, volunteers, guests and subcontractors of the University.

Morehead State University is committed to creating and maintaining a community where all individuals who participate in University education programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Morehead State University will not tolerate sexual misconduct as defined in this Policy, in any form. Such acts are prohibited by University policy, as well as state and federal laws. Individuals who the University determines more likely than not engaged in these types of behaviors are subject to penalties up to and including dismissal or separation from Morehead State University, regardless of whether they are also facing criminal or civil charges in a court of law.

Nothing contained in this policy shall be construed to supplant or modify existing laws of the Commonwealth of Kentucky and the United States. This policy shall not be used to remedy acts which are crimes under the laws of the Commonwealth of Kentucky or the United States.

DEFINITIONS:

A. MSU POLICY DEFINITIONS

MSU policy prohibits gender discrimination. Sexual misconduct is a form of gender discrimination which violates state and federal law and University policy. Different forms of sexual misconduct are explained in this policy. The determination of what constitutes sexual misconduct will vary with the facts and circumstances of each case. For acts of

gender discrimination that is not covered by one of the forms of sexual misconduct addressed in this policy, please see MSU's other policies on discrimination.

Actual Knowledge Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any official of the University who has the authority to institute corrective measures on the University's behalf.

Complainant means an individual who has reported being or is alleged to be the victim of conduct that could constitute sexual harassment,

Consent as used in this policy is defined as follows:

Consent is **informed**. Consent is an affirmative, knowing, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity.

Consent is **voluntary**. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Even though consent does not necessarily need to be verbal, relying purely on non-verbal communication can lead to misunderstandings. A spoken agreement is the most clearly indicated form of consent. It may not, in any way, be inferred from silence, passivity, lack of resistance or lack of an active response alone. Consent cannot be assumed to be given by the absence of a "no".

Consent is **revocable**. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is **incapacitated**. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment. Consent must be given with rational and reasonable judgment, so if the alleged victim was physically incapacitated from the consumption of alcohol or drugs, unconsciousness, or any other kind of inability, consent cannot be obtained.

Consent cannot be given when a person is:

- Less than sixteen (16) years of age;
- Sixteen (16) or seventeen (17) years of age and the actor is at least ten (10) years older than the victim at the time of the sexual act;
- Unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or mental illness;
- Mentally incapacitated;
- Physically helpless; or
- Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency unless the persons are lawfully married and no court order prohibits the contact.

Dating Violence means violence committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Deliberate Indifference is unreasonableness in light of the known circumstances.

Domestic Violence includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Kentucky; or
- Any person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kentucky.

Education Program or Activity includes locations, events, or circumstances within the United States over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.

Formal Complaint is a document signed and filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the University's grievance procedures consistent with this policy that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed by the University for the Title IX Coordinator, and by any additional method designated by the University. As used in this policy, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal Complaint. Where the Title IX Coordinator signs a formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sexual Harassment Sexual harassment is conduct based on sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Stalking occurs when someone engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Supportive Measures means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the University's education program or activity, without unreasonably burdening the other party; protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Unwelcome Conduct on the basis of sex is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

TITLE IX COORDINATOR

The Title IX coordinator has a responsibility to coordinate the University's efforts to comply with its obligations under Title IX, the Title IX regulations, this Policy and University Administrative Regulations. These responsibilities include coordinating any investigations of complaints received pursuant to Title IX and the implementing regulations and Policy.

The Title IX Coordinator, Deputy Title IX Coordinator and Title IX Investigators shall be appointed by the President and identified in the Appendix to this Policy.

REPORTING:

***Special reporting requirements for minors (individuals under 18 years old).** MSU **requires reporting** to the educational institution's Title IX Coordinator(s) **and** to either law enforcement or child protective services any sexual abuse of a minor by faculty, staff, volunteers and contractors affiliated with the institution.

MSU strongly encourages persons who have experienced sexual misconduct, or knows of someone 18 years or older who has experienced sexual misconduct, to report the incident to MSU per this policy. Any person may report sex discrimination including sexual harassment whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment. The report may be made in person, by mail, by telephone or electronic mail using the contact information listed for the Title IX Coordinator, official of the University who has the authority to institute corrective measures on the University's behalf or may be reported by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time including during nonbusiness

hours by using the telephone number or electronic mail address or by mail to the office address listed for the Title IX Coordinator.

In case of an emergency or ongoing threat, a victim should get to a safe location and call 911 or 606-783-2035. Calling 911 will put the caller in touch with local police. Calling 606-783-2035 will put the caller in touch with university police.

Any official of the University who has the authority to institute corrective measures on the University's behalf and who has received information of alleged misconduct under this Policy shall notify and provide such to the Title IX Coordinator. University officials deemed to have such authority shall be designated pursuant to University Administrative Regulation.

A. Reporting Timeframe

Any person may file a report of sexual misconduct at any time. Timely reporting is encouraged to preserve evidence and provide the alleged victim and the respondent with information regarding rights, options and resources available under this policy and federal/state laws.

The Title IX Coordinator or Deputy Coordinator will provide alleged victims of sexual misconduct and respondents with information about available support services and resources, and also assist alleged victims in notifying law enforcement, including the local police, if the person elects to do so. **Alleged victims are not required to report to area law enforcement in order to receive assistance from or pursue options within MSU.** Reporting sexual misconduct to the police does not commit the alleged victim to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate if the alleged victim decides to proceed with criminal charges.

B. Reporting Options

This section addresses options for reporting sexual misconduct. MSU may investigate sexual misconduct even without a formal complaint whenever it knows or there is reasonable cause to believe that sexual misconduct in violation of this policy has occurred.

1. **Confidential Disclosure:** Despite MSU's strong interest in having persons report complaints of sexual misconduct, it is understood that not everyone is prepared to make an official report to MSU. Help may be sought from certain resources that are not required to reveal private, personally identifiable information unless there is cause for fear for the survivor's safety or the safety of others. If a person desires that details of the incident be kept confidential, contact should be made with counselors or other providers who can maintain confidentiality, such as the Caudill Health Clinic. Such professionals

generally are not legally required to report personally identifiable information given in confidence unless given permission or unless the allegations involve a minor. If the survivor chooses not to pursue a judicial process option (e.g., criminal charges), generally no further action will be taken unless the professional who receives the concern believes there is an imminent threat to the survivor or others. Persons who disclose incidents of sexual misconduct to counselors, clergy or other providers who can legally maintain confidentiality should discuss whether to have that counselor, advocate or provider report the misconduct to MSU and request interim measures required by Title IX, or request discretionary support measures from MSU without reporting the nature of the conduct.

2. Requests via a Counselor, Clergy or other Provider: A victim may have his/her counselor, clergy or other provider who can legally maintain confidentiality request interim measures from MSU on the victim's behalf. The request may trigger MSU's obligation to investigate. To the extent a counselor, clergy or other provider makes a disclosure but, consistent with the victim's wishes, asks MSU not to investigate or otherwise notify the accused of the report, the Title IX Coordinator or Deputy Coordinators will consider whether he/she can honor the request while still providing a safe and nondiscriminatory environment for all students, faculty and staff, and to take interim measures to protect the victim as needed.

C. Required Confidentiality

The University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Education Rights & Privacy Act and regulations, or as required by law or to carry out Title IX including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

D. Drug, Alcohol and other Code of Conduct Amnesty

MSU offers amnesty (immunity) to students who may have violated MSU's policies concerning the use of drugs and/or alcohol and other student code of conduct violations at the time of the incident when he or she became a victim of, a respondent or witnessed, sexual misconduct. Therefore, no MSU alcohol or drug charges or other code of conduct violation for involvement in or reporting shall be made if the violation does not involve sex discrimination or sexual harassment but arises out of the same facts or circumstances as a report, complaint or formal complaint of sexual harassment.

The purpose of this section is to encourage reporting. Alleged victims or witnesses should not let their use of alcohol or drugs or other code of conduct violations deter them

from reporting an incident. When conducting the investigation, MSU's primary focus will be addressing the sexual misconduct violation and not other violations that may be discovered or disclosed. However, MSU may provide referrals to counseling and may require educational programming on drugs and alcohol, rather than disciplinary sanctions, in such cases.

INTERIM AND SUPPORTIVE MEASURES

The Title IX Coordinator or Deputy Coordinator has the right to determine which, if any, supportive measures should be issued in an individual case. Such measures are designed to restore or preserve access to the University's education program or activity, without unreasonably burdening the other party. Supportive measures shall be available to complainants and respondents equitably. The measures shall protect the safety of all parties and the University's educational environment including deterring sexual harassment. Supportive measures shall be kept confidential except as necessary to facilitate enforcement.

The Title IX Coordinator or Deputy must promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes as to the measures. The complainant shall be advised that supportive measures are available whether or not a formal complaint is filed. Additionally, the Title IX Coordinator/Deputy shall explain to the Complainant the process for filing a formal complaint.

The Title IX Coordinator/Deputy shall similarly advise the respondent as to the availability of supportive measures and consider the respondent's wishes as to same.

Supportive measures may include but are not limited to changes in class schedules; living or working arrangements; safety escorts; parking arrangements; dining arrangements; no contact orders and resources for professional counseling.

The University may remove a respondent from any of its education programs and/or activities on an emergency basis. The University must undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

For a respondent who is a student, the Title IX Coordinator/Deputy may recommend to the Dean of Students that the student respondent be removed from an education program and/or activity. The Dean may issue the removal notice based upon the above criteria. The notice may initially be issued verbally, by email or other electronic means or in writing by in person or mail delivery. If the initial notice is not in writing, a written notice shall be issued as soon as possible. The notice shall state the removal parameters and the specific reason for the decision. The notice shall also provide the

respondent the right to challenge the removal immediately by requesting an in person hearing with the Dean. The respondent may present his/her position orally and/or in writing and may be represented at the hearing.

For an employee, the Title IX Coordinator/Deputy may recommend to the employee's Vice President that the employee be placed on administrative leave during the pendency of the investigation. The Vice President may issue the leave order and provide written notice, or verbal notice followed by written notice, to the employee.

MSU shall enforce any orders of protection issued by a court. If any member of the MSU community obtains an order of protection or restraining order, he/she should promptly inform the Title IX Coordinator or Deputy Coordinator and provide a copy of that order. A copy of the order shall also be provided to MSU Police.

ADVISORS

A party may be accompanied by an advisor of the party's choice at any related meeting or proceeding. The advisor may or may not be an attorney except as provided by law. The advisor may consult with the party but may not speak for the party.

Notwithstanding the above, the advisor shall be allowed to be at the hearing to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

If a party does not otherwise have an advisor, at the time of the hearing the University must provide without fee or charge to the party, an advisor of the University's choice to conduct cross examination on behalf of that party.

CONFLICT OF INTEREST

The University requires that no Title IX Coordinator/Deputy, investigator, decision maker, or any person designated to facilitate an informal process may have a conflict of interest or bias for or against complainants or respondents generally or for or against an individual complainant or respondent.

INFORMAL RESOLUTION

At any time after a formal complaint has been filed, but prior to a determination regarding responsibility, an informal resolution process may be utilized to resolve a complaint. The University may facilitate the informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Either party may request informal resolution, or the Title IX Coordinator/Deputy or the Investigator may suggest the informal process to the parties. The University will use its best efforts to conduct the informal resolution within ten (10) days of agreement to enter into the process.

Both parties shall sign a voluntary written consent to participate in the informal resolution process. The parties shall be provided a written notice setting forth the allegations and the requirements of the informal resolution process and notice of finality of the resolution. At any time prior to a signed written resolution agreement, a party has the right to withdraw from the informal resolution process and resume the formal complaint process. Once the written resolution agreement is signed by both parties, they are both precluded from resuming the processing of the formal complaint arising from the same allegations. The parties shall further be given written notice of any resolution records that will be maintained or could be shared.

The informal resolution process may not be offered or facilitated to resolve allegations that an employee sexually harassed a student.

INVESTIGATION PROCESS

MSU's Title IX Coordinator/Deputy and/or investigators shall investigate alleged violations of this policy. Each report must be evaluated on a case-by-case basis, taking into account the relevant circumstances of each case. The investigation process shall include interviews, reviewing student and/or employee files, and gathering and examining other relevant evidence, as appropriate. The investigation process will be balanced and fair and give both the accused and the complainant the chance to discuss his/her involvement in the reported incident. It is presumed the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the policy's process.

Notice of Allegations. Upon receipt of a formal complaint, the University must provide the following written notice to the parties who are known:

- Notice of the University's Title IX process including notice of the informal resolution process;
- Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- Sufficient details include the identities of the parties involved in the incident, if known, conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX process;
- Notice that the parties may have an advisor of the party's choice, who may be but is not required to be, an attorney; except as provided by law;
- Notice of rights of inspection and review of evidence;

- Notice of any student conduct code provision prohibiting knowingly making false statements or knowingly submitting false information during the grievance process.

If in the course of an investigation the Title IX Coordinator/Deputy and or investigators decide to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations previously provided, the University must provide notice of the additional allegations to the parties whose identities are known.

Dismissal of a Formal Complaint. The University must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the University's code of conduct.

The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a required or permitted dismissal, the University must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties including rights of appeal.

Consolidation of Formal Complaints. The University may consolidate formal complaints as to the allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Investigation of a Formal Complaint. When investigating a formal complaint and throughout the investigative process the University must:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties provided that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of

treatment to the party, unless the University obtains the party's voluntary, written consent to do so for the investigative and hearing process.

- Provide an equal opportunity for the parties' witnesses, including fact and expert, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties with the opportunity to have an advisor throughout the investigative process as provided in this policy.
- Provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity

MSU will use best efforts to complete the investigation within ninety (90) calendar days from receipt of a report. Limited extensions of all timeframes may be granted for good cause with written notice to the complainant and the respondent for the reason of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Investigative Report. The University shall create an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to a hearing, the report shall be sent to each party and the party's advisor, if any. The report shall be in an electronic format or hard copy for the parties' review and written responses.

HEARING AND APPEAL OFFICERS

Post investigative hearings and appeals conducted pursuant to this policy shall be conducted by a hearing or appeals officer as provided through University Administrative Regulation. The officers shall be trained pursuant to this policy and may be university employees or hired through contract.

The Title IX Coordinator/Deputy shall assign officers to hearings and appeals.

HEARING PROCESS If a case has not been dismissed or resolved in the informal process, the Title IX Coordinator/ Deputy, upon completion of or receipt from an investigator of an investigative report, will refer the case for a live hearing.

The Title IX Coordinator/Deputy shall provide the parties the name of the hearing officer. The parties shall have seven days to provide in writing to the Title IX Coordinator any objection to the officer due to bias which shall be specifically set forth.

Each party will have the following hearing rights:

- The right to notice of the specific allegations at issue, including notice of anticipated witnesses and evidence to be addressed at the hearing. Each party shall submit to the Title IX Coordinator and to all other parties a list of all witnesses the party may call at the hearing and a copy of all exhibits to be introduced.
- The right to access information and evidence directly related to him/her within a reasonable time before the hearing.
- The right to attend the hearing and speak on his/her own behalf. Invoking the right not to speak will not be considered an admission of responsibility.
- The right to have an advisor as set forth in this policy.
- The right to introduce evidence and question witnesses at the hearing, provided, however, that the complainant and the accused will not be allowed to directly question each other. Cross examination shall only be conducted by a party's advisor.
- The hearing officer may ask questions of the witnesses at the hearing.

Hearings will be closed to the public. Hearings shall be recorded, by video, audio, or transcript with a copy of same made available to both parties for inspection and review. Testimony shall be sworn.

Live hearings may be conducted with all parties physically present in the same geographic location. At the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions.

The hearing officer shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant direct questions and cross examination may be asked of a party or witness. Prior to a party or witness answering a question, the hearing officer shall determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Evidence that does not rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, shall not be admitted at the hearing unless the person holding such privilege has waived the privilege.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statements of that party or witness in reaching a determination regarding responsibility.

The hearing officer shall not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Following a hearing, the hearing officer must issue a written determination regarding responsibility. The hearing officer shall determine whether, given the evidence and testimony presented, it is more likely than not that a violation of this policy occurred (preponderance of evidence). If it is found a violation occurred, remedies must be designed to restore or preserve equal access to the University's education program and/or activities. Possible hearing outcomes for students include, but are not limited to, changes to class schedules; changes to living arrangements; limitations on participation in activities, community service, suspension, separation or expulsion from MSU. Faculty and staff, among other possible remedies, may be formally reprimanded, be limited in participation in academic and campus activities, suspended without pay, or removed from employment. The measure taken will depend upon the individual circumstances.

The hearing officer's written determination must include:

- Identification of the allegations potentially constituting sexual harassment under this policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the party, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's policies and regulations to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- A description of the disciplinary sanctions, if any;
- A statement of any remedies to restore or preserve equal access to the University's education program and/or activities; and
- The University's procedures and permissible basis for the parties to appeal.

The Title IX Coordinator will inform both parties simultaneously in writing of the outcome the investigation and/or hearing within seven (7) business days of the investigation and/or hearing's conclusion. If the measure taken by the hearing officer includes suspension or removal of a faculty or staff member, the Title IX Coordinator will also forward the decision to the President. If the measures involve a student, the outcome will be reported to the Vice President for Student Affairs

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

APPEAL PROCESS

An appeal may be filed from either dismissal of a formal complaint or any individual allegations of the complaint or from a decision of the hearing officer.

Once a decision has been made and both parties have been notified of the outcome, either party may appeal that outcome (including punishment). Appeals must be received by the Title IX Coordinator no later than ten (10) calendar days after the date the underlying decision is issued to both parties. Appeals received after the deadline will not be processed. Appeals should be marked "confidential" and submitted by hand delivery or by email or mail to the Title IX Coordinator. The appeal shall state with particularity the basis therefor.

Both parties will be notified in writing by the Title IX Coordinator that an appeal was received. The notice shall include the basis for the appeal. Both parties shall have ten (10) days from the date of the notice to submit a written statement to the Title IX Coordinator in support of, or challenging, the outcome. A copy of the statement shall be provided by the Title IX Coordinator to the other party.

The Title IX Coordinator/Deputy shall provide the parties the name of the Appeals Officer. The parties shall have seven (7) days to provide in writing to the Title IX Coordinator/Deputy any objection to the appeals officer appointed due to bias on behalf of the officer which shall be specifically stated.

After the statements have been received, or the time to file the statements has run, the time for objection to the appeals officer has expired, and the record for appeal is assembled, the Title IX Coordinator shall submit the appeal to the Appeals Officer.

MSU Appeals Officer will assess and decide the appeal based on the record within twenty-one (21) calendar days of receiving the appeal, unless circumstances require more time, in which case the Title IX Coordinator will advise the parties of the need for more time. For appeals of dismissal or partial dismissal of a formal complaint, the record shall consist of the full case record of the complaint. Appeals following a hearing, shall consist of the hearing record and exhibits considered by the hearing officer. Grounds for appeal are limited to the following:

- MSU made a procedural error, which affected the outcome.
- New evidence has been discovered that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- The determination of whether a violation occurred was arbitrary and unjustified by the evidence presented at hearing.
- The Title IX Coordinator/Deputy, investigator(s), or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. Such objection must have been previously raised in a timely manner by the party.
- The penalties imposed or other protective measures taken are too severe based on the evidence of record.

The Appeals Officer shall issue a written decision describing the result of the appeal and the rationale for the result.

The Title IX Coordinator will notify the parties simultaneously of the outcome of the appeal. All decisions by MSU Appeals Officer are final with the exception of the following:

- Sanctions which include student suspension or expulsion, which may be further appealed to the President and Board of Regents in the same manner as provided by the MSU Eagle Student Handbook for Student Disciplinary Committee decisions.

- Sanctions which include suspension or dismissal of a staff member which may be appealed to the President who will review the record and determine if dismissal or another penalty is appropriate. The President's decision shall be final.
- Sanctions which include faculty termination/removal, which may be further appealed to the President and Board of Regents. Sanction involving suspension without pay, may be appealed to the President. The President shall review the record and determine whether suspension or dismissal is appropriate. The decision of the President shall be final if he/she determines suspension or another penalty is appropriate. If the President determines removal is appropriate, he/she shall refer the case to the Board of Regents who shall review the case on the record de novo. The Board may either remove the faculty member or may determine if a lesser penalty is appropriate. The decision of the Board shall be final.

NO RETALIATION OR DETERRENCE FOR PARTICIPATION IN THE TITLE IX PROCESS

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privileges secured by Title IX or its regulations. This protection shall include reporting, filing a complaint, testifying, assisting, participating or refusing to participate in any manner in an investigation, proceeding or hearing under this policy. Retaliation includes intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment for the purpose of interfering with any right or privilege secured by Title IX or its regulations.

Retaliation does not include the exercise of rights protected by the First Amendment to the U.S. Constitution. Likewise, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy, does not constitute prohibited retaliation. However, the fact of a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

DISSEMINATION OF POLICY AND INFORMATION

The University shall notify applicants for admission and employment as well as current students of the title, office address, electronic mail address, and telephone number of the Title IX Coordinator and Deputy Coordinator.

Notification that the University does not discriminate on the basis of sex in education programs and activities shall be made to applicants for admission and employment as well as students. The notice shall advise that the University is required by Title IX and regulations thereunder not to discriminate and that these requirements extend to admission and employment. The notification shall further provide that inquiries as to the application of Title IX and regulations thereunder may be referred to the University's Title IX Coordinator, the Assistant United States Secretary of Education or both.

The University shall prominently display contact information for the Title IX Coordinator and this policy on the University's website and in all handbooks and catalogs made available to current students and applicants for admission and employment.

RECORDKEEPING

The University must maintain the following records for a period of no less than seven years:

1. Each sexual harassment investigation, including any determination regarding responsibility, and any audio or audiovisual recording or transcript of a hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;
2. Any appeal and decision;
3. Any informal resolution and result therefrom;
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process. The University shall make these training materials publicly available on its website.

For each response to a formal complaint, the University shall create and maintain for a period of no less than seven years, records of any actions including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational program and/or activity. If no supportive measures are provided the complainant, then the University shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The University may continue to update additional explanations and/or detail additional measures taken.

TRAINING AND EDUCATION

All students, faculty, staff and others as designated by the title IX Coordinator must complete MSU-sponsored training on sexual misconduct issues within the dates and times arranged by the Title IX Coordinator as frequently as designated by the President. This shall include training as relates to minors on campus and reporting of abuse. Failure to do so may result in corrective action.

The University must ensure that the Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education program and activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University must ensure that decision makers receive training on any technology to be used at a live hearing, on issues of relevance, of questions of evidence, including when questions and evidence about the complainants sexual predisposition or prior sexual behavior are not relevant. The University also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinator/Deputy, investigators, decision makers, and any person who facilitates an informal process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

RESOURCES

Numerous resources both on and off campus are available and shall be set forth in the Appendix to this policy. The resources shall be updated as appropriate without necessity to amend this policy.

APPENDIX

Title IX Coordinator

Harold Nally
301 Howell McDowell Administration Building
Morehead, KY 40351
606-783-2097
titleixcoordinator@moreheadstate.edu

Deputy Title IX Coordinator

Lora Pace
217 ADUC
Morehead, KY 40351
606-783-2517

Investigators

Richard Fletcher
186 Academic Athletic Center
606-783-5136

William Grise
105C Lloyd-Cassity Bldg.
606-783-2424

Sara Larson
307 Allie Young Hall
606-783-9453

Dr. Robert Royer
307D Breckinridge Hall
606-783-2734

RESOURCES

Health

MSU Health Clinic (606) 783-2055
112 Allie Young Hall
Morehead, KY 40351

St. Claire Regional Medical Center
222 Circle Drive (606) 783-6500 (Emergency Department)
Morehead, KY 40351

Mental Health/Counseling/Advocacy

MSU Counseling Center (606) 783-2123
112 Allie Young Hall
Morehead, KY 40351
After hours, evenings, weekends contact (606) 783-2035

This is the MSU Police Dept. and they have the on-call schedule for licensed counselors.

St. Claire Regional Medical Center (606) 783-6805
Counseling
475 Clinic Drive
Morehead, KY 40351

Pathways (606) 784-4161 ext. 4401
321 East Main Street
Morehead, KY 40351

Pathways Rape Crisis Center (606) 784-4161 ext. 4401
325 East Main Street (800) 562-8909
Morehead, KY 40351

DOVES of Gateway, Inc. (606) 784-6880
P.O. Box 1012 (800) 221-4361 (Crisis #)
Morehead, KY 40351

KCADV (502) 209-5382
Kentucky Coalition Against Domestic Violence
111 Darby Shire Circle
Frankfort, KY 40601

24-hour Crisis Line	(800) 273-8255
National Domestic Violence Hotline	(800) 799-SAFE
National Sexual Assault Hotline	(800) 656-HOPE

Police Department Contacts

MSU Police Department 100 Laughlin Bldg. Morehead, KY 40351	(606) 783-2035 or 911 on campus
Morehead Police Department 105 East Main Street Morehead, KY 40351	(606) 784-7511
Kentucky State Police (Post 8) 1595 Flemingsburg Road Morehead, KY 40351	(606) 784-4127

Online Resources

If a person feels the need to pursue further help and counseling, there are institutions and charity groups that are specialized and specifically trained to aid survivors of different violent crimes. A formal report is not required to access these resources. These are some nationwide websites that provide help:

National Domestic Violence Hotline
<http://www.thehotline.org/>

Stalking Resource Center
<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

National Sexual Assault Hotline
<http://www.rainn.org/get-help/national-sexual-assault-online-hotline>

Girls Health Website
<http://www.girlshealth.gov/safety/saferrelationships/daterape.html>

Clery Center for Security on Campus
<http://clerycenter.org/help-victims>

APPROVE NAMING OF FACILITY

BOR (IV-A-5)
August 6, 2020

Recommendation:

That the Board of Regents approve the naming of the bowling facility and renaming of the bowling lanes *Eagle Alley*.

Background:

The University bowling lanes are located in the Laughlin Building and offer league, group, and cosmic bowling.

Prepared by: Jacqueline Graves

APPROVE STUDENT CODE OF CONDUCT REVISIONS

**BOR (IV-A-6)
August 6, 2020**

Recommendation:

That the Board of Regents approve the revised Student Code of Conduct. The revisions modify the student conduct code violation of Academic Misconduct to align with the changes to the Academic Honesty policy. A copy of the revision, with changes in red, is attached.

Background:

The Student Conduct Code reinforces student behavioral expectations by providing general notice of expected and prohibited behavior. The code is not written with the specificity of a criminal statute, and similarities in vocabulary between criminal statutes and the Student Code of Conduct are unintentional. Students found responsible for misconduct are subject to disciplinary sanctions intended to promote personal growth, educate students to the consequences of their actions, and contribute to the safety/security of the larger campus community. The entire Student Handbook (web-based format) and Conduct Code are available online at: <https://www.moreheadstate.edu/Student-Affairs/Dean-of-Students/Student-Handbook>

Student Conduct Codes

SCC 100 Academic Misconduct (Academic Honesty)¹

Last Revised: 8/01/2020

Intentionally assisting or participating in cheating, plagiarism, and/or other forms of fraudulent misrepresentation of academic work.

SCC 150 Academic Disruption

Last Revised: 8/01/2020

Engaging in behavior that intentionally, materially, and substantially disrupts the educational process associated with teaching, research, or other activities related to the academic mission of the university; or otherwise creates the conditions in which teaching cannot continue.

SCC 200 Aiding and Abetting

Last Revised: 8/01/2012

Assisting with, having knowledge of without reporting, or inciting violations of the Student Conduct Code or other University policies and/or regulations.

SCC 300 Alcohol

Last Revised: 8/01/2012

Possessing or consuming alcoholic beverages in public or on University-owned or controlled property, or while participating in University related activities which include student teaching, internships, class trips, etc., or providing alcoholic beverages to others. Possession of alcohol related paraphernalia (i.e., kegs, beer bongs, empty containers, etc.). Exhibiting drunken behavior on University-owned or controlled property or while off-campus in a manner that can be defined as disorderly, disrespectful, or disruptive to the community, individual citizens, and/or the reputation of Morehead State University.

SCC 400 Assault

Last Revised: 8/01/2017

Intentionally causing, or attempting to cause, physical injury to another person. This policy is applicable on University-owned or controlled property, or while participating in University related activities (e.g. student teaching, internships, class trips). The standard is applicable off-campus when: 1) all parties involved are MSU employees or students; or 2) the behavior threatens the health, welfare, safety, or educational environment of the University community or any individual member thereof; or 3) the behavior reflects adversely upon the student's character and fitness as a member of the student body and/or the reputation of Morehead State University.

SCC 500 Commercial Solicitation

Last Revised: 8/01/2019

Distributing, promoting, selling, advertising, or collecting information or material goods on University property or within University-owned facilities for commercial purposes without authorization per UAR 322. Requesting that someone engage in the aforementioned activities on behalf of an individual or organization.

SCC 600 Computer Infraction – Fraud and Misconduct

Last Revised: 8/01/2017

a. Fraud:

Using information technology or communication systems to disseminate, transfer, enter, alter, or gather data by using another person's or organization's access code or technology/communication equipment without their permission.

b. Misconduct:

Using University-owned or provided equipment or internet access systems in any manner that is prohibited by the Student Conduct Code, MSU policies; or local, state or federal law.

SCC 700 Copyright Infringement¹

Last Revised: 8/01/2018

Reproducing or distributing copyrighted materials without approval from the copyright owner.

Using technology, devices, or services to circumvent measures that control access to copyrighted works. Refer to PG-55 Technology Resource Acceptable Use for additional information.

SCC 800 Discrimination

Last Revised: 8/01/2019

Unlawfully discriminating against another person on a basis not reasonably related to the education or job function involved including, but not limited to, age, sex, sexual preference, disability, race, religion, national origin, or marital status.

SCC 900 Disorderly Conduct

Last Revised: 8/01/2019

Acting or inciting others to act in a manner that substantially disrupts or interferes with the normal operation of the University or infringes on the rights of other members of the University community. Engaging in conduct that intentionally, materially, and substantially disrupts another's expressive activity if that activity is occurring in a campus space previously scheduled or reserved for that activity or under exclusive use or control of a particular group. Interfering with or obstructing the duties of any University administrator, faculty, staff member or local authority.

SCC 1000 Drugs

Last Revised: 8/01/2012

Using, possessing, transferring, or selling drug paraphernalia, narcotics, or other controlled and/or illegal substances on University-owned or controlled property or while participating in University related activities which include student teaching, internships, class trips, etc.

SCC 1100 Failure to Comply

Last Revised: 8/01/2012

Failure to respond to the reasonable requests of University officials or law enforcement officers acting in performance of their duties, and/or failing to produce identification when requested to do so by these individuals. Failing to abide by sanctions imposed during a University disciplinary proceeding or authorized official.

SCC 1300 Forgery

Last Revised: 8/01/2012

Altering, creating, completing, executing, falsifying, or authenticating any school record document, instrument, or identification card with the intent to defraud or harm any individual.

SCC 1400 Fraud

Last Revised: 8/01/2012

Deceiving, tricking, or misrepresenting with the intent of defrauding or misleading another individual or the University. Examples include, but are not limited to, misuse of an ID card in dining facilities and/or library.

SCC 1500 General Policies

Last Revised: 8/01/2012

Violating any rule, regulation, or policy established by the Board of Regents, the President of the University or an authorized representative, any college, division, department, office, or other authorized University employee within the scope of his/her authority. Such rules, regulations, and policies will be published, posted, or otherwise publicized in a fashion that allows students opportunities to have adequate knowledge of said information.

SCC 1600 Harassment

Last Revised: 8/01/2017

Any behavior that is threatening or intimidating and which places a person in reasonable fear of harm to person or property; or creates a hostile environment by substantially interfering with or impairing the person's educational performance, opportunities or benefits. Any conduct or pattern of behavior directed at an individual or a group in a manner that is unwelcome and, under the totality of the circumstances, is so severe or pervasive that it undermines or detracts from the person's educational or work opportunities or participation in University activities, effectively denying equal access to University resources and opportunities.

SCC 1800 Hazing

Last Revised: 8/01/2019

Any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization. Acting in a manner or creating a situation which subjects another, voluntarily or involuntarily, to abuse, mistreatment, degradation, humiliation, harm or intimidation. Pursuant to KRS 164.290 such action may result in suspension or dismissal from the University.

SCC 1900 ID /Access Card Misuse

Last Revised: 8/01/2012

Using, or allowing another person to use, a University ID card in an inappropriate manner. Examples include, but are not limited to, improper use in a dining facility, unauthorized use with a card access system, improper use in the library, etc.

SCC 2000 Key Misuse

Last Revised: 8/01/2012

Possessing or duplicating keys or door access cards to any University premises without proper authorization.

SCC 2100 Lying

Last Revised: 8/01/2012

Intentionally providing false information to, or filing false charges against, another person or organization. Examples include, but are not limited to, written or oral communication given to student government association, residence hall association, disciplinary councils, University officials, faculty members, law enforcement officers

SCC 2300 Prohibited Animals

Last Revised: 8/01/2019

Possessing an animal in a University non-residential facility, other than a service animal trained to provide assistance to a person with a disability. Possessing an unauthorized animal in a University residential facility, other than an assistance animal that has been approved as a reasonable accommodation by the University. Possessing an animal on University property that damages property, substantially disrupts the University community, or exhibits aggressive behavior. Failing to maintain an animal on a leash, maintain control of an animal, or properly dispose of animal waste.

SCC 2400 Possession of Stolen Property

Last Revised: 8/01/2012

Receiving, retaining, storing, or disposing of movable property which belongs to another person knowing that it has been stolen, or having reason to believe that it has been stolen unless it is clear that the property is received, retained, or stored with the specific intent to restore it to the proper owner.

SCC 2500 Property Damage

Last Revised: 8/01/2012

Causing or assisting with the misuse, vandalism, malicious or unwarranted damage or destruction, defacement, disfigurement, or unauthorized use of property belonging to the University or another person or organization. Examples include, but are not limited to, fire alarms, fire equipment, elevators, telephones, keys, library materials, statues, artwork, or vehicles.

SCC 2700 Residence Hall Infractions

Last Revised: 8/01/2017

Failure to adhere to the guidelines as outlined in the "Housing Policies and Guidelines" (see Office of Housing website).

SCC 2750 Retaliation

Last Revised: 8/06/2018

Retaliating, or encouraging others to retaliate, against another student for making an inquiry, participating in an investigation, or making a reasonable good faith report of possible non-compliance with laws and regulations. Procedure for this code violation may be prescribed by PG-5, PG-6, or PG-61.

SCC 2770 Safety Infractions

Last Revised: 8/06/2019

a. Fire Safety:

Willfully or maliciously burning or attempting to burn property. Failure to exit a University-owned building upon activation of a fire alarm or direction from designed authorities or personnel. Tampering with, obstructing, or inappropriately using fire equipment (e.g. fire extinguishers, smoke detectors, etc.). Using, possessing, or improperly storing hazardous materials (e.g. fireworks, propane tanks) on University-owned or controlled property.

b. Obstruction of Movement:

Preventing the free movement of a person and/or vehicle, or restricting the access to or egress from a designated passageway.

c. Recreational Equipment Safety:

Using bicycles, scooters, in-line skates, skateboards, hoverboards and other recreational equipment on any University-owned property in a manner that causes (or may cause) damage, hazardous conditions, or harm to others.

SCC 2800 Sexual Misconduct ¹

Last Revised: 8/07/2018

Engaging in behavior that includes, but is not limited to, sexual harassment, sexual assault, intimate partner violence, sexual exploitation, and stalking. Engaging in, or advocating engagement in, inappropriate sexual acts such as indecent exposure or sexual activity in public. Refer to PG-6 Sexual Misconduct Policy for additional information.

SCC 3100 Theft

Last Revised: 8/01/2012

Unlawfully taking (or attempting to take) property belonging to the University, members of the Morehead State University community, visitors, guests, or another person or organization.

SCC 3200 Tobacco

Last Revised: 8/01/2019

Using or distributing tobacco, products giving the appearance of tobacco, or electronic nicotine delivery systems (e.g. vaporizers, e-cigarettes) while on University owned, leased, or controlled property unless excluded by UAR 902 Morehead State University Designated Smoking Areas. The violation includes conduct while in University owned, leased, or rented vehicles at any location, and privately owned vehicles that are parked on, or in transit across, University property. Refer to PG-64 University Tobacco Use Policy for additional information.

SCC 3300 Trespassing

Last Revised: 8/01/2012

Entering a building or area where the individual has been informed by University officials and/or law enforcement officers that s/he has been restricted from that facility or location. Being in a University-owned or controlled facility after designated hours of operation without written permission from designated officials.

SCC 3400 Unauthorized Entry

Last Revised: 8/01/2012

Entering a building or area without proper authorization from University officials and/or the owner of the property in question.

SCC 3500 Unauthorized Use of Recording

Last Revised: 8/01/2019

Using an electronic device to record (without prior permission from the person(s) being recorded):
1) another person in which the person has a reasonable expectation of privacy; or 2) an exam or a meeting closed pursuant to the Kentucky Open Meetings Act. Use of an electronic recording device is permissible and authorized when appropriately used as a reasonable accommodation in accordance with ADA policies and laws.

SCC 3600 Violation of Law

Last Revised: 8/01/2012

Committing any act that is in violation of federal, state, and local laws or regulations, whether on or off campus, when it appears that the student has acted in a manner that adversely impacts or interferes with the University's normal function, or which injures or endangers the general welfare of the University community.

SCC 3700 Weapons

Last Revised: 8/01/2019

Possessing any weapon, regardless if licensed to possess said weapon, while on University-owned or controlled property, or at University-sponsored or supervised activities without proper authorization from the President of the University or his/her designee. Examples include, but are not limited to firearms, rifles, handguns, shotguns, ammunition, air guns, paint-ball guns, pellet guns, explosive devices (including fireworks), hunting knives, etc. Refer to PG-62 Weapons Policy for additional information.

¹ *Procedure for this code violation may be prescribed by another university policy or regulation.*

**APPROVE STANDARD
OPERATING PROCEDURE
MANUAL REVISIONS**

**BOR (IV-A-7)
August 6, 2020**

Recommendation:

That the Board of Regents approve revisions to the Morehead State University Police Department Standard Operating Procedure (SOP) Manual.

Background:

The Morehead State University Police Department's Standard Operating Procedure Manual (SOP) was first approved and published in 1980 as the Public Safety Policy Manual. Since that time, there have been several revisions brought before and approved by the Board. It is customary to update the Manual as needed, which may include changes to Kentucky Revised Statutes (KRS); as equipment, trainings, and accreditation standards are revised; and to address minor housekeeping updates related to University procedures and processes. The Emergency Operations Plan contact list is routinely updated as personnel changes occur.

The proposed revisions to the manual are attached hereto.

Prepared by: Russell Mast



**Morehead State University Police Department
Standard Operating Procedure Manual**



Title: Response to Active Resistance	Chapter: 7 Page(s): 1-9	KACP 1.3, 1.8, 1.11, 1.12
Approved Date: July 2020	Review Month: June	Issued by: Colonel Merrell J. Harrison Chief of Police

- I. **Purpose:** The purpose of this policy is to direct officers in the appropriate use of force.
- II. **Policy:** The policy of this department is to protect and serve all citizens while at the same time respecting the rights of suspects and balancing the need for officer safety in use of force events. It is the policy of this department that officers will use only reasonable force to bring an incident or event under control. Reasonable force is only that force which is necessary to accomplish lawful objectives. All uses of force must be objectively reasonable.
- III. **Definitions:**
- A. **Deadly Force:** The Federal Courts have defined deadly force as any force which creates a substantial likelihood of death or serious bodily harm. The Kentucky Legislature has further defined deadly force in K.R.S. 503.010: "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.
 - B. **Non-Deadly Force:** All uses of force other than those that create a substantial likelihood of serious bodily harm or death.
 - C. **Imminent:** Has a broader meaning than immediate or instantaneous, the concept of imminent should be understood to be elastic, involving an ongoing period of time depending on the circumstances rather than a moment in time under the definition of immediate.
 - D. **Immediate means:** That the officer is faced with an instantaneous, or presently occurring threat of serious bodily harm or death.
 - E. **Objectively Reasonable:** The amount of force that would be used by other reasonable and well-trained officers when faced with the circumstances that the officer using the force is presented with.
 - F. **Reasonable Belief:** Reasonable belief means that the person concerned, acting as a reasonable person believes that the prescribed facts exist.

- G. Serious Physical Injury:** "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ"
- H. Electronic Control Device:** Electronic Control Devices, TASER,™ or stun-guns (electronic control weapons) that disrupt the central nervous system of the body.
- I. Active resistance:** a subject actively resists when they take affirmative action to defeat an officer's ability to take them into custody.
- J. Physical force:** Use of any part of an officer's body, such as joint manipulation, leverage, pain compliance, take-down maneuvers or neck restraint holds.
- K. Chemical agents:** Use of any chemical agent to overcome subject resistance.
- L. Impact tools/strikes:** Use of any tools, object or body part to strike a subject
- M. Electronic tools:** Use of any electronic equipment on a subject being controlled
- N. Injury or complained of injury:** Any time the subject being controlled is injured or complains of injury.
- O. Pointing of Firearms:** Any time an officer points a firearm at an individual, notwithstanding the fact that deadly force is not ultimately deployed. This does not include drawing a firearm and maintaining at the low-ready position.
- P. Firearms discharges:** Any discharge of a firearm other than at the range or during qualification whether unintentional, for animal dispatch, or whether a subject is hit or not will be reported in a separate manner consistent with these policies.
- Q. Canine use:** Use of a police canine will be reported on a special form to capture any form of use whether there is contact with a subject or not.

IV. Procedure:

- A.** In determining the appropriate level of force officers should apply the levels of force under the department's trained use of force continuum along with the following three factor test:
 - a.** How serious is the offense the officer suspected at the time the particular force used?
 - b.** What was the physical threat to the officer or others?
 - c.** Was the subject actively resisting or attempting to evade arrest by flight?
- B.** Officers may sometimes be required to take custody or otherwise control an individual who is a danger to themselves or others due to a medical or mental health emergency. In these cases, an officer may be required to use objectively reasonable force. In determining whether force is appropriate and the proper under the department's trained response to resistance options, the officer should consider the following three factor test:
 - 1)** Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
 - 2)** Was some degree of force reasonably necessary to ameliorate or reduce the immediate threat?
 - 3)** Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

- C. **Force Options:** Officers have several force options that will be dictated by the actions of the suspect upon the appearance of the police officer. Officers may be limited in their options due to the circumstances and actions of the subject. For example, an officer who immediately observes a subject with a firearm unjustifiably threatening another may immediately respond with deadly force without considering other force options.
- a. **Command Presence:** Visual appearance of officer where it is obvious to the subject due to the officer's uniform or identification that the officer has the authority of law.
 - b. **Verbal Commands:** Words spoken by the officer directing the subject as to the officer's expectations.
 - c. **Soft Empty Hand Control:** Officer's use of hands on the subject to direct the subject's movement; Techniques that have a low potential of injury to the subject.
 - d. **Chemical Spray:** Where subject exhibits some level of active resistance/active aggression, officers may use chemical spray to temporarily incapacitate the subject.
 - e. **Electronic Control Devices:** Where subject exhibits some level of active resistance/active aggression an officer may use an electronic control device to temporarily incapacitate the subject.
 - f. **Hard Hand Control:** Punches and other physical strikes, including knees, kicks and elbow strikes that have the possibility of creating mental stunning and/or motor dysfunction.
 - g. **Impact Weapons:** Batons, ASP/Expandable Baton may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control. Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
 - h. **Canine:** Use of canine to bite and hold subject to prevent escape or to gain control of a subject who is actively aggressing toward officer(s). Prior to deployment of a canine, a warning in the form of an announcement shall be made.
 - i. **Deadly Force:** The Federal Courts have defined deadly force as any force when employed may bring about serious bodily injury or death. The Kentucky Legislature has further defined deadly force in K.R.S. 503.010: "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.
- D. **Deadly Force:** The use of deadly force is objectively reasonable
- a. When the officer is faced with an immediate threat of serious physical injury or death to him/herself, or some other person who is present, or;
 - b. When the officer has probable cause to believe that the subject has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death to another and by his/her escape poses an imminent threat of serious bodily harm or death to other(s).
- E. Kentucky statutory law provides:
- a. The use of physical force by an officer upon another person is justifiable when the officer, acting under official authority, is making or assisting in making an arrest, and he:
 - 1) Believes that such force is necessary to effect the arrest;

- 2) Makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and
 - 3) Believes the arrest to be lawful.
- b. The use of deadly physical force by a defendant upon another person is justifiable only when:
 - 1) The officer, in effecting the arrest, is authorized to act as a peace officer; **and**
 - 2) The arrest is for a felony involving the use or threatened use of physical force likely to cause death or serious physical injury; **and**
 - 3) The officer believes that the person to be arrested is likely to endanger human life unless apprehended without delay.
- F. In all deadly force events, officers should warn the subject prior to using deadly force where feasible.
- G. Once the subject's active resistance has ceased and control has been gained an officer is no longer authorized to use force. Officers should immediately provide any necessary medical assistance to the subject to the degree to which they are trained and provide for emergency medical response where needed.
- H. Discharge of Firearms Restrictions:
 - a. Warning Shots are prohibited
 - b. Discharge of firearms is prohibited when the officer is presented with an unreasonable risk to innocent third parties.
 - c. When a moving vehicle is involved, use of deadly force by discharging a firearm is dangerous, can be ineffective, and should not occur when there is an unreasonable risk to the safety of persons other than the subject. Whenever possible, officers should avoid placing themselves in a position where use of deadly force is the only alternative.
 - d. Even when deadly force is justified, firearms shall not be discharged at a vehicle unless:
 - 1) The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person, or
 - 2) The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an immediate threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
- I. **Less-Lethal Weapons/Tactics:** Prior to deployment of any less-lethal weapon, officers must be trained and certified through this agency or the manufacturer in a recognized training program covering the proper use of the weapon from both the technical and legal aspects. All deployments must be consistent with departmental use of force training and policy.
 - a. **Chemical Spray:**
 - 1) Chemical Spray shall not be deployed as a compliance technique for a person who is passively or verbally non-compliant. Active resistance/active aggression shall be required.
 - 2) Chemical Spray shall never be used as a punitive measure.
 - 3) Officers should never spray from a pressurized can directly into a subject's eyes from a close distance due to the potential for eye injury as a result of the pressurized stream. Officers should never spray directly into a subject's eyes

from closer than three feet or the distance recommended by the manufacturer of the spray (whichever is shorter) unless deadly force would be justified.

- 4) Officers shall consider alternatives to chemical spray when attempting to control a subject in a crowded-enclosed area due to the innocent over-spray that may cause the onset of panic.
- 5) Officers shall consider alternatives to chemical spray when the event is inside a building, particularly where the building has a closed-ventilation system due to the potential impact on innocent persons who may have to be evacuated (temporarily) from the locations.
- 6) Once control is gained, officers should immediately provide for the decontamination of the subject.
- 7) If the person shows any signs of physical distress or does not recover in a reasonable amount of time, officers should immediately direct an emergency medical response and render first-aid at the degree for which they are trained.

b. Electronic Control Devices

- 1) An electronic control device as a force option is the same level of force as chemical spray.
- 2) Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
- 3) Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance or active aggression shall be required.
 - (a) Flight from an officer, standing alone, is not a justification for the use of an electronic control device. Officers should consider the nature of the offense suspected the level of suspicion with respect to the person fleeing, and the risk of danger to others if the person is not apprehended immediately. Additionally, officers should consider the type of area, i.e. asphalt, railroad tracks, grass etc.
 - (b) Officers must be trained concerning ability of electrical charge to act as an ignition for combustible materials. (Note: Officers have been seriously injured and or killed after deploying a Electronic Control Device in the presence of open natural gas during suicidal person call)
 - (c) Multiple Electronic Control Device deployments against an individual may increase the likelihood of serious injury where the individual is suffering from other symptoms such as cocaine intoxication. Policy and training should encourage officers to minimize the successive number of discharges against an individual where possible.
 - (d) The agency recognizes however, particularly where back-up officers are unavailable, that multiple applications may be necessary to gain or maintain control of a combative individual.
 - (e) No more than one officer should deploy an electronic control device against a single individual at the same time.
 - (f) A contributing factor to serious injury or death is the level of a subject's exhaustion. Studies recommend that when an officer believes that control of a subject will be necessary and met with resistance, deployment of the Electronic Control Device should be considered early on in the event so that the person has not reached a level of exhaustion prior to the Electronic Control Device's use.

- (g) In cases where subject is actively resisting an officer's attempt to take them into custody but not threatening the officer with an assault-it is recommended that the Electronic Control Device be used in the "push [drive] stun mode."
- (h) The preferred targeting is the center mass of the subject's back, however it is recognized that it is not always possible to get behind the subject.
- (i) Where back-targeting is not possible, frontal targeting should be lower center mass, intentional deployments to the chest shall be avoided where possible.
- (j) Officers who are aware that a female subject is pregnant shall not use the Electronic Control Device unless deadly force would be justified due to the danger created by the secondary impact or the possibility of muscle contractions leading to premature birth.
- (k) Officers shall make all reasonable efforts to avoid striking persons in the head, neck, eyes or genitals.
- (l) Officers are prohibited from using the device as punitive measure.
- (m) Electronic Control Devices shall not be used against person who is in physical control of a vehicle in motion unless deadly force would be justified based on an existing imminent threat.
- (n) A warning prior to discharge is preferred but not always necessary for this type of force to be considered reasonable, model policies as well as courts have noted that giving a subject, who is assaultive toward the officer, a warning may enhance the danger to the officer and the subject by giving the subject time to avoid the deployment. See: *Draper v. Reynolds*, 369 F.3d 1270 (11th Cir. 2004).
- (o) Officers shall make all efforts to warn other officers that a deployment is about to occur.
- (p) The device shall never be used on a handcuffed person to force compliance unless the subject is actively resistant and control cannot be otherwise accomplished.
- (q) Officers should consider the location and environment of the subject. i.e. Is the subject at the top of a stairwell such that when incapacitated by the Electronic Control Device-they fall down the stairs causing a collateral injury. Officers shall avoid using Electronic Control Device in cases where the subject is elevated i.e. roof, fire escape, tree, bridge, stairwell, etc. etc. such that the secondary impact may cause serious injury.
- (r) Officers should be aware that a subject's heavy clothing may impact the effectiveness of the electronic control device.
- (s) Officers should consider whether the subject has been exposed to combustible elements that may be on their person such as gasoline. The use of an Electronic Control Device on such persons may cause an ignition and fire.
- (t) Officers should consider the particular subject and any vulnerabilities they may have such as: a person who is small in stature or very frail will be more dramatically impacted; some agencies have been criticized as well as sued for use on pregnant women, the very young and the elderly.
- (u) Alternative tactics shall be utilized where the officer has prior information that the subject suffers from a disability which would increase the danger

to that person by using the Electronic Restraint Device. i.e. A person at the scene tells an officer that the subject has a heart condition.

- (v) Deployed probes that have been removed from a suspect should be treated as a bio-hazard.
- (w) Where EMS is available, their services may be utilized for the removal of darts that have penetrated the skin as long as such removal can be accomplished without causing further injury or pain to the subject.
- (x) All persons who have been the subject of a Electronic Control Device deployment shall be monitored for a period of time with a focus on symptoms of physical distress. Any person who appears to be having any form of physical distress following the deployment of an ECD, shall be transported to a medical facility for a medical examination. It should be noted that studies indicate that persons who suffer from excited delirium may not be immediately impacted and the onset of difficulty may occur a period of time after the police control event.
- (y) Mandatory Medical Clearance at Hospital:
 - (i) Persons struck in a sensitive area-eyes, head, genitals, female breasts.
 - (ii) Where the probes have penetrated the skin and Officers/EMS cannot safely remove darts in accord with this policy.
 - (iii) Persons who do not appear to have fully recovered after a short period of time (Model Policies use a ten-minute time limit however officers who observe unusual physical distress should immediately call for medical assistance and should not wait the ten-minute recovery period recommended by some of the model policies)
 - (iv) Persons who fall into one of the vulnerable classes such as juveniles, pregnant women, persons who are small in stature, persons who officers become aware have a pre-existing medical condition that increases danger and the elderly.
 - (v) Subject who request medical assistance.
- (z) Documentation:
 - (i) All deployments of an Electronic Control Device shall be documented including those cases where a subject complies once threatened with such a device. By documenting the non-discharge uses, an agency establishes officer judgment and control as well as the deterrent effect of this tool.
 - (ii) Photographs of the affected area, shall be taken following the removal of darts from the subject to document any injury. Where the push-stun method has been used, photographs are extremely important due to the increased potential for this method to cause scarring.
 - (iii) Supervisory personnel shall be notified and review all Electronic Control Device deployment for consistency with policy and training.
 - (iv) Darts/Cartridges shall be properly stored and maintained as evidence following a discharge.

- (v) Officers are required to complete a "use of force/response to active resistance form" which shall be reviewed by a supervisor following the ECD use.
- (vi) All deployments shall be reviewed by the agency as well as training personnel.
- (vii) Where there is any indication of lasting injury, claim or complaint internal data from device shall be maintained.
- (viii) All ECD units will be audited **monthly** to ensure that all deployment/activations have been reported as required.

Commented [MJH1]: Monthly sounds much too burdensome. With our rare TASER usage, quarterly makes more sense.

c. Impact Weapons: Batons, ASP/Expandable Baton

- 1) Impact weapons may be utilized in cases where the officers believe the use of these weapons would be reasonable to bring the event under control.
- 2) Examples would be where other options have been utilized and failed or where based on the officer's perception at the time, the other options would not be successful in bringing the event to a successful conclusion.
- 3) Officers shall not intentionally strike a person in the head with an impact weapon unless deadly force would be justified.

V. Reporting Control to Active Resistance:

A. Purpose (Reporting): It is the purpose of this policy to provide police employees and supervisors with guidelines for reporting control to active resistance. The department will develop a Report to Control Active Resistance (RCAR) form to capture all required information described in this policy.

B. Policy (Reporting): Police officers are given the authority to use force to overcome a subject's resistance to the officer's order to comply, effect arrest, defend against assault, and prohibit flight. It is incumbent that officers be held accountable to safeguard the rights of members of the public. This policy mandates that members of the Department accurately, completely and timely report subject control of active resistance and a supervisor conducts a prompt investigation and reports this investigation findings.

C. Procedures (Reporting):

- a. Officers who become involved in an incident that requires any degree of force are required to immediately notify their supervisor. The involved officer will provide a detailed documentation of the use of force utilized in the official police report prepared for the incident involved. In cases where no supervisor is working the officer will also be responsible for completing the RCAR report identified below prior to the end of their shift.
- b. A Report to Control Active Resistance (RCAR) form shall be prepared by a supervisor whenever an officer of this agency utilizes reportable force, as described in the definition of this policy, in the performance of their duties.
- c. The RCAR form will be completed in detail including a narrative account of the following:
 - 1) The actions of the subject that necessitated that use of force as a response to overcome the active resistance of the subject.
 - 2) The reasons why force was required and the type of force the officer utilized in overcoming the resistant subject.
 - 3) Any injuries or complaint of injuries of either the subject or the officer and any medical treatment received.

D. Supervisory Responsibilities: Once notified of an incident in which an officer has utilized force, the supervisor will immediately respond to the scene to investigate the incident. If the involved officer's supervisor is not available to respond, another supervisor will be dispatched to complete the RCAR. The supervisor will accomplish the following investigative steps in conducting the investigation:

- a. Interview the involved subject if they are cooperative, to determine their account of the incident and if they have a complaint. If they do have a complaint the supervisor shall complete a **Public Service Report**. If they have any type of injury, **Internal Affairs** or the designated departmental IA person will be notified. Additionally, should the supervisor determine that unreasonable force was utilized, the Internal Affairs designated investigator will be notified and assume control of the investigation.
- b. If a crime scene exists; or police equipment exists, which may contain forensic evidence, the supervisor shall ensure that the scene and evidence is processed, photographed and preserved.
- c. Take photographs of the involved officer(s) and subject(s) depicting any potential injuries or documenting the lack of any injuries to the parties involved.
- d. Interview, preferably audio-recorded/audio-visual recorded, all witnesses to the incident and document their description of the event.
- e. Ensure that a qualified health care provider handles any injuries or other medical condition being experienced by the involved person.
- f. The supervisor shall review any video recording of the incident, if available, prior to the completion of the RCAR and the approval of the officer's reports
- g. The supervisor investigating the use of reportable force shall be responsible for the review and approval of the officer's reports of the incident, when practicable
- h. The supervisor will complete the RCAR prior to completing their shift and submit it along with the officer's report to their chain of command for review.
- i. **Exceptions: The following do not require the completion of a RCAR unless otherwise required by the above policy:**
 - 1) Handcuffing or escorting a compliant, cooperative subject.
 - 2) Physical removal of peaceful demonstrators whom do not resist.

Commented [MJH2]: Our terminology would say ...the supervisor shall explain the complaint filing process...

Commented [MJH3]: Internal Affairs would be omitted. The designated IA person part will remain.



Morehead State University Police Department
Standard Operating Procedure Manual



Title: Vehicle Operations (Routine & Emergency Responses)	Chapter: 51 a Page(s): 1	KACP 21.1
Approved Date: July 2020	Review Month: June	Issued by: Colonel Merrell J. Harrison Chief of Police

I. PURPOSE

The purpose of this policy is to provide guidelines and directions for the establishment of responsibility for the safe operation of police vehicles during non-emergency operation and emergency (light and siren) operation, as well as to establish the responsibility and duties of participating officers and supervisors.

II. POLICY

The department recognizes its responsibility to apprehend criminals and lawbreakers, but it also recognizes that higher responsibility to protect and foster the safety of all persons in the operation of police vehicles.

Officers should only engage in emergency operation (lights and siren) when the totality of the circumstances outweighs the risk to the officer and the public. In initiating any emergency operation, the officer shall carefully consider the facts, the driving environment, the seriousness of the offense, the need for apprehension, and the safety of all persons.

Officers will be held accountable for the consequences of reckless disregard for the safety of others, violations of this policy, and/or violations of the provisions of Kentucky state law.

III. DEFINITIONS

- A. *Emergency Response for emergency call:*** a request for police service that presents an actual and immediate danger of death or serious physical injury. (Should be adapted for local terminology.)
- B. *Emergency operation:*** driving an emergency vehicle while operating lights and siren, and in accordance with state law, during a high-level emergency response (department coding as applicable) call or during pursuit of a fleeing vehicle
- C. *Marked police vehicle:*** a police vehicle displaying the emblem and marking of the police department with emergency lights and audible warning devices.
- D. *Unmarked police vehicle:*** a police vehicle not displaying the emblem or marking of the police department but which is equipped with emergency lighting

IV. General Operation of Agency Vehicles

1. All agency vehicles will be driven safely and properly in compliance with applicable laws and regulations. Agency vehicles are conspicuous symbols of authority on the streets and the actions of the drivers are observed by many. Agency personnel are expected to set an example of good driving behavior and habits.
2. Operators of agency vehicles must bear in mind that traffic regulations requiring other vehicles to yield the right of way to any emergency vehicle (KRS 189.930) does not relieve the emergency vehicle operator from the duty to drive with due regard for the safety of all persons using the highways (KRS 189.940) nor shall they protect the driver from the consequences of an arbitrary use of emergency equipment.
3. The driver must recognize the variable factors of weather, road surface conditions, road contour, and traffic congestion, all of which directly affect the safe operation of any motor vehicle, and shall operate the vehicle with due regard to these factors.

A. Non-Emergency Operation:

1. Only authorized personnel shall operate agency vehicles.
2. Non-emergency operation as defined by this agency includes all vehicle operation, except during emergency responses and pursuit situations. This includes the use of any vehicle for transportation purposes, or general patrol driving.
3. Non-emergency driving dictates vehicle speed consistent with the normal flow of traffic, obedience to vehicle laws and posted signs, adherence to commonly understood "rules of the road" and courtesy.
4. Emergency lights and/or hazard warning lights shall be used anytime the police vehicle is parked where other moving vehicles may be endangered. Alley lights and spotlights may be used when the vehicle is stationary or moving and shall not interfere with the vision of operators of other approaching vehicles.
5. Unmarked vehicles may be used to stop vehicles provided they are equipped with emergency lights and siren; the emergency lights shall be in operation at all times during a stop.
6. Incidents that do not meet the authorization for emergency response criteria should be considered non-emergency runs, including but not limited to the following examples:
 - a. Burglar alarms
 - b. Hold up alarms (non-verified)
 - c. Non-injury collisions (no serious traffic hazards)
 - d. Report runs
 - e. Domestic violence (non-active and no weapons involved)
 - f. Trouble runs (non-life threatening circumstances, incidents not involving weapons)
 - g. Thefts
 - h. Shopliftings (with no active confrontation)

B. Emergency Operation:

1. KRS 189.940 stipulates that officers can disregard certain traffic laws only when responding to an emergency or in actual pursuit, and at all times the officer has activated the vehicle emergency lights and siren. The officer is further required to

operate the vehicle with due regard for the safety of other persons and or property. Emergency operation without lights and siren is strictly prohibited.

2. **Emergency Operation to calls for Service (non pursuit):** Emergency Operation for Law Enforcement calls for service are **authorized** when there is a request for police service that presents an actual and imminent danger of death or serious physical injury
3. ***When an Officer that is approaching a scene discontinues the use of emergency lights and siren, he/she must use caution and obey existing traffic laws.***
4. In the emergency operation of agency vehicles, it is important that officers weigh the seriousness of the situation (injury, offense, etc.) against the hazards to the health and welfare of other citizens generated by high speeds or maneuvers.
 - a. Officers will, at all times, consider factors which may have a bearing on the emergency operation of their vehicle, including:
 - 1) Type of the emergency run
 - 2) Nature of location (e.g. school zone, residential, business, etc.)
 - 3) Time of day and day of the week
 - 4) Lighting conditions
 - 5) Vehicular and pedestrian traffic
 - 6) Type of roadway
 - 7) Condition of the roadway (e.g. dry, wet, paved, gravel, icy)
 - 8) Weather conditions (e.g. clear, overcast, rain, fog)
 - 9) Condition of the emergency vehicle
 - 10) Officer's driving ability

C. Restrictions: The following restrictions will apply to the emergency operation of an agency vehicle:

1. Units that have prisoners, witnesses, suspects, complainants, or other non-police personnel as passengers will not operate in the emergency mode. (***Exception: emergency operation is authorized with supervisory approval in the event of a medical emergency.***)
2. ***When approaching a loading or unloading School bus Officers shall stop and wait until it is safe to continue.***

D. Responsibilities of the Emergency Response Vehicle Driver:

1. Continually evaluate the seriousness of the situation against the hazards to the health and welfare of the citizens generated by emergency operation.
2. Continually evaluate external factors which may have a bearing on the emergency operation of the vehicle.
3. Discontinue the emergency operation at any time hazardous circumstances or environmental factors present an unreasonable risk to public safety.

E. Responsibilities of the Supervisor:

1. Monitor the emergency response.
2. Control the number of authorized vehicles making the emergency run depending on the nature of the run and the number of officers needed for safety and a proper tactical response.
3. Continually evaluate the seriousness of the situation against the hazards to the health and welfare of the citizens generated by emergency operation.

4. Continually evaluate external factors which may have a bearing on the emergency operation of the vehicle.
5. Order the discontinuation of the emergency operation at any time hazardous circumstances or environmental factors present an unreasonable risk to public safety.

F. Responsibilities of the Communications Center (if applicable):

1. Assure that the on duty supervisor is aware of the emergency response call for service.
2. Assure that that all critical information is received from the officers involved and relayed to other units.
3. Keep the supervisor apprised of all relevant information that have and might impact the emergency response.
4. Clear the radio channel when officers arrive on scene of high risk incidents.
5. Continue monitoring the emergency response and provide any updated information received by communications center.

V. Reasons for Discontinuation of Emergency Operation:

Any officer responding in emergency operation (lights and siren) shall terminate the emergency operation and convert to non-emergency operation and immediately notify communications and or supervisor of his point of discontinuation under any of the following conditions:

- A. When ordered by a supervisor, or any other higher-ranking member of the department.
- B. When the officer believes the level of danger created by the emergency operation outweighs the necessity for emergency response.
- C. When the officer believes there is no longer an emergency to authorize the emergency operation.
- D. If mechanical problems develop in the emergency vehicle.
- E. If hazardous circumstances or environmental factors present an unreasonable risk to the public (example ice storm).

VI. Review Process AUDIT/INSPECTION:

- A. Supervisory reviews of video camera recordings shall be done quarterly regarding emergency response driving of officers.
- B. The ultimate purpose for these inspections is to ensure that emergency operation driving is being conducted consistent with agency policy/procedure and the provisions of Kentucky state law.
- C. Specific examples of positive and negative issues, if observed, shall be identified and addressed.
- D. Identified deficiencies or areas of concern shall result in a follow-up audit/inspection within one month of the discovery of the deficiency.

VII. Training: Officers shall receive **yearly** training on emergency response **driving**.

Commented [MJH1]: This should remove "yearly" and state, as required and mandated by Ky Law Enforcement Council.



**Morehead State University Police Department
Standard Operating Procedure Manual**



Title: Vehicle Pursuit	Chapter: 51 Page(s): 1 - 9	KACP 21.1-2
Approved Date: July 2020	Review Month: June	Issued by: Colonel Merrell J. Harrison Chief of Police

I. PURPOSE

The purpose of this policy is to provide guidelines and directions for the establishment of responsibility for the operation of police vehicles during a pursuit; for the initiation or discontinuation of pursuits; for the responsibility of participating officers and supervisor; and to provide the essential balancing of the necessity for the pursuit and more immediate apprehension of the fleeing subject against the risks involved.

In fulfilling departmental objectives, officers will occasionally encounter dangerous subjects who will attempt to avoid capture by fleeing in motor vehicles. In these cases, officers should attempt to anticipate flight and utilize tactics to prevent a pursuit. If tactics to prevent a vehicle pursuit fail, tactics should be utilized to minimize the duration of the pursuit, and if possible, to influence the subject vehicle's direction in ways that reduce the risk of harm to others.

II. POLICY

The department recognizes its responsibility to apprehend criminals and lawbreakers, but it also recognizes a responsibility to operate police vehicles with due regard for persons. Officers, operating under pursuit conditions, shall consider the need to pursue and periodically reevaluate the initial decision to pursue throughout its course. In initiating any pursuit, the officer shall consider the facts, driving environment, seriousness of the offense, need for apprehension, consequences, and due regard for persons. An officer operating an authorized law enforcement vehicle to overtake a motorist that is not yet aware that he or she is being overtaken is not a vehicle pursuit.

III. DEFINITIONS

- A.** A. Terminate the pursuit: the law enforcement officer ends his or her involvement in the pursuit by slowing down to the posted speed limit and turning off his or her emergency lights and siren.
- B.** Aerial support: the use of aerial surveillance to monitor a pursuit or take over the pursuit allowing vehicles to back off to a supportive role.

- C. Boxing-in: surrounding a violator's vehicle with emergency vehicles that are then slowed to a stop, forcing the violator's vehicle to do likewise.
- D. Channelization: a technique where objects or vehicles are positioned in a manner intended to direct or redirect a fleeing vehicle into a clearly identifiable and unobstructed path.
- E. Caravan: operating emergency vehicles in a line or alongside each other in a pursuit.
- F. Deadly physical force: means force which is used with the purpose of causing death or serious physical injury or which the defendant knows to create a substantial risk of causing death or serious physical injury.
- G. Interjurisdictional pursuit: Any pursuit that crosses into a neighboring jurisdiction, such as across municipal, county, or state line.
- H. Paralleling: operating an emergency vehicle on streets or a route parallel to the pursuit route.
- I. Primary unit: The authorized law enforcement vehicle that initiates a pursuit or any other unit, which assumes control of the pursuit.
- J. Secondary unit(s): Any authorized law enforcement vehicle that becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.
- K. Precision immobilization technique (PIT) maneuver: a controlled deliberate contact with the rear of a fleeing vehicle by a marked law enforcement vehicle with the intention of spinning the vehicle in a predetermined direction to bring it to a stop.
- L. Ramming: deliberate contact with a violator's vehicle by a marked law enforcement vehicle to force the violator's vehicle off the roadway.
- M. Roadblock: a barricade or other physical obstruction across a roadway set up to stop or prevent the escape of a fleeing vehicle.
- N. Stop stick/spike strip: a rigid column or a strip of belting containing specially designed hollow spikes which when deployed across a lane of roadway, penetrates tires, slowing the pursued vehicle usually to a complete stop.
- O. Vehicle pursuit: an active attempt by a law enforcement officer operating an authorized law enforcement vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.
- P. Video recording (MVR): a recording device that records video and/or audio of a police event from a camera.

IV. PROCEDURE

- A. **Initiating the Pursuit:** Officers may only initiate a pursuit when there is reasonable suspicion that the driver or an occupant of the vehicle is fleeing from having committed a serious felony which includes:
 - 1. Offenses where a suspect has killed a person
 - 2. Assault in the first, second, or third degree
 - 3. Kidnapping
 - 4. Wanton endangerment in the first degree

5. Unlawful imprisonment in the first degree
6. Rape in the first degree
7. Sodomy in the first degree
8. Burglary in the first or second degree
9. Sexual abuse in the first degree
10. Robbery in the first or second degree
11. Escape in the first degree
12. Arson in the first degree
13. Or the attempt of any of the above offenses

Or

Prior to initiating the pursuit, the officer has reasonable suspicion that the driver is engaged in outrageous, reckless driving such that the necessity of immediate apprehension outweighs the level of danger created by the pursuit, excluding serious traffic offenses such as DUI, unless there are extenuating circumstances.

B. Pursuit Restrictions:

1. Only two properly equipped [emergency lights and siren] vehicles, a primary vehicle and a secondary vehicle, shall engage in a pursuit, unless additional vehicles are authorized specifically by the managing supervisor.
2. Officers shall not continue a pursuit or assist in a pursuit unless immediate authorization for the pursuit is received from the managing supervisor – if one is on duty.
3. Officers shall not set up roadblocks or deploy tire deflation devices without the approval of the supervisor.
4. Officers shall not box-in a vehicle without supervisory authorization.
 - a) Low-speed box-in is a seizure and therefore may only be utilized in accordance with the department's response to active resistance policy.
 - b) High-speed box-in is a seizure by means of force which may cause serious bodily harm or death and thus constitutes a use of deadly force. Before a supervisor may authorize the use of a "high-speed box-in" deadly force must be justified.
5. Pursuits shall not be undertaken where the officer is operating a two- or three-wheeled police motorcycle.
6. If a pursuit is terminated by the primary vehicle, (unless for mechanical reasons), or the supervisor, then all officers shall terminate the pursuit.
7. Only properly equipped vehicles with emergency lights and siren shall initiate a pursuit.
8. In the event that an unmarked vehicle with emergency lights and siren initiates a pursuit, the unmarked vehicle shall give way and terminate the pursuit as soon as a

primary and secondary marked vehicle is available to take over the pursuit unless otherwise authorized to remain in the pursuit by a supervisor.

9. Officers engaged in a pursuit shall not drive vehicles the wrong way (against the regular flow of traffic) on a divided highway, interstate, or expressway. **or any other street or highway designated for one-way traffic, despite allowances in the state vehicular code.**
10. When a fleeing vehicle goes the wrong way against traffic, the primary officer may, whenever practical:
 - a) parallel the vehicle in the correct lane of traffic;
 - b) notify dispatch of a wrong-way driver;
 - c) request assistance from outside agencies to shut down vehicular traffic on the highway coming in the fleeing subject's direction; and
 - d) have communications notify department of transportation to activate reader boards to advise motorists of a wrong way driver.
11. Officers shall not engage in a pursuit when they are transporting prisoners, witnesses, suspects, complainants or any person who is not a member of this department.

Commented [MJH1]: I would see no need to exclude taking a cruiser down a one way street in the city limits, such as 5th street, if due diligence is taken.

C. Considerations: Officers, operating under pursuit conditions, may consider:

1. Time of day and day of the week;
2. Lighting conditions;
3. Vehicular and pedestrian traffic;
4. Type of roadway;
5. Condition of the roadway (e.g. dry, wet, paved, gravel, icy);
6. Weather conditions (e.g. clear, overcast, rain, fog);
7. Condition of the emergency vehicle and the condition and type of the fleeing vehicle;
8. Driving ability of the officer; and
9. Speeds of the emergency vehicle and the fleeing vehicle.

D. Responsibilities of the Primary Unit:

1. Immediately and continuously activate emergency lights and siren.
2. Immediately notify communications of:
 - 1) his or her unit number;
 - 2) the location, speed, and direction of travel;
 - 3) reasons for the pursuit;
 - 4) the description of the vehicle being pursued;
 - 5) the number of occupants;
 - 6) other agencies involved; and
 - 7) location at the time the pursuit is terminated.

3. Provide updated information regarding direction of travel, speed, and other pertinent details until the secondary vehicle is available to take over the radio broadcast.
4. Allow the secondary unit to assume all communications.
5. Abandon the pursuit if any mechanical problems develop in the primary unit's vehicle.
6. Terminate the pursuit if the hazardous circumstances or environmental factors present an unreasonable risk to public safety.

E. Responsibilities of the Secondary Unit:

1. The first officer arriving to assist the primary vehicle driver shall notify communications and becomes the secondary vehicle driver.
2. This officer shall receive immediate authorization from the supervisor to assist in the pursuit to the extent that a supervisor is available and monitoring the pursuit.
3. This officer shall activate and operate continuous emergency lights and siren from the point of entry into the pursuit until it is ended while following the primary vehicle at a safe distance and assume the radio communications for the primary vehicle driver.
4. If the primary unit vehicle becomes disabled, the secondary unit shall take over as the primary unit.

F. Responsibilities of the Supervisor:

1. Immediately assert control over the pursuit.
2. Control the number of authorized vehicles in the pursuit.
3. Immediately authorize continuation of the pursuit or order discontinuation depending on the hazardous circumstances and environmental factors present as communicated by the officer.
4. Order units to clear intersections in the likely path of the pursuit where appropriate.
5. Ensure that not more than two (2) vehicles engage in the pursuit unless additional vehicles are required based on the following circumstances:
 - 1) the severity of the offense;
 - 2) the number of occupants in the suspect vehicle; and
 - 3) the likelihood of the suspects being armed.
6. Direct and approve necessary tactics in the pursuit including authorizing termination of the pursuit through approved use of force tactics.
7. Continuously evaluate the pursuit.
8. Assign additional officers to traffic control, accident investigation, foot pursuit, and/or perimeter security.
9. Notify affected allied agencies, if necessary.
10. Order the discontinuation of the pursuit at any time hazardous circumstances or environmental factors present an unreasonable risk to public safety.
11. **May** respond to the scene of the termination of the pursuit, **if deemed necessary**.

G. Responsibilities of the Communications Center:

Commented [MJH2]: Merely because a pursuit is terminated does not automatically need to be a supervisor response, especially due to our spread out factors of personnel.

1. Assure that the supervisor of the pursuit is clearly identified and that the approval to initiate or continue the pursuit is broadcast.
2. Assure that pursuing officers (primary and secondary vehicle drivers) request supervisory approval and that all critical information is received from the officers involved and relayed to other units.
3. Keep the supervisor apprised of all relevant traffic problems and other actions that might impact upon the conduct of the pursuit.
4. Record all information received from the pursuing officer.
5. Clear the radio channel.
6. Conduct an inquiry of the license plate through NCIC.
7. Notify adjacent jurisdictions of the pursuit and the potential that it may enter their jurisdiction.
8. Continue monitoring the pursuit.

H. Uses of Force/Termination of Pursuit:

1. Roadblocks, the PIT maneuver, and tire deflation devices as well as the firearm, constitute seizures, i.e. a stopping of movement by a means intentionally applied. Officers should recognize that the use of a tactic that is likely to result in a serious crash constitutes deadly force and shall not be used unless deadly force is justified.
2. Use of firearms:
 - 1) The use of firearms to affect the apprehension of a fleeing suspect is a use of deadly force.
 - 2) Officers shall not shoot at or from a moving vehicle unless:
 - 1) The officer has a reasonable belief that an occupant of the vehicle poses an imminent threat of death or serious physical injury to the officer or another person; or
 - 2) The officer has a reasonable belief that an occupant is using the vehicle in a manner that poses an imminent threat of death or serious physical injury to the officer or another person, and there is no avenue of escape.
3. Roadblocks: Only as a case of last resort where there is an imminent threat to public safety, and where authorized by a supervisor, may a roadblock be established. This decision to establish a roadblock shall consider:
 - 1) The safety of the officers.
 - 2) The risk of physical injury to the occupants of the pursued vehicle.
 - 3) The protection of citizens and their property.
 - 4) Stationary roadblocks must be clearly visible at a distance sufficient to enable approaching vehicles to stop safely. The officer in charge of the roadblock shall notify communications of the exact location.
4. PIT maneuver: Only officers trained in this particular maneuver will attempt to employ this procedure and shall not use this maneuver in speeds over 40 mph, unless deadly force would be justified.
5. Stop sticks/spike strips:

- a) Only officers trained in the use of stop sticks/spike strips shall deploy them. Officers are responsible for making sure that their use is contained in the pursuit report. The deploying officer shall advise pursuing units and all other units that they should distance themselves from the pursued vehicle and be prepared to slow down before entering the deployment site. Other traffic shall be diverted from the site if at all possible.
- b) Stop sticks/spike strips may be used with the on-duty supervisor's authorization on pursuits entering this jurisdiction where an outside pursuing agency is actively engaged to promote the safety of innocent persons in the vicinity.
- c) Stop sticks/spike strips/tire deflation devices could, under certain circumstances, constitute the use of deadly force. As with any use of force tactic, prior to the deployment of such a tactic, officers must be trained with respect to the tactic.
- d) Officers shall not use tire deflation devices on motorcycles or ATVs unless deadly force would be justified.

6. In all cases, officers should employ high-risk traffic stop techniques at the end of pursuits.

I. **Reasons for Discontinuation of Pursuit:** Any officer involved in a pursuit shall terminate the pursuit, and immediately notify communications of his or her point of discontinuation under any of the following conditions:

- 1. **An officer whose emergency lights/siren malfunction during a pursuit shall terminate his or her involvement in the pursuit.**
- 2. When ordered by a supervisor, or any other higher-ranking member of the department.
- 3. When any officer involved in the pursuit believes the level of danger created by the pursuit outweighs the necessity for immediate apprehension.
- 4. When the risk conditions have increased, and the subject's identity has been established to the point where later apprehension can be accomplished and there is no longer any need for immediate apprehension.
- 5. When the location of the pursued vehicle is no longer known.
- 6. When motorists/pedestrians are involved in an **serious injury collision** accident as a **result** of the pursuit, immediate assistance shall be given. If there is only the marked primary police vehicle, then this vehicle must stop to provide assistance.

Discontinuation of a pursuit requires the officer(s)/deputy(s) to abandon all active attempts to stop and/or follow the suspected vehicles and officer(s)/deputy(s) shall turn off all emergency equipment.

An officer will not be disciplined when, in the officer's opinion, circumstances warrant terminating the pursuit.

J. **Interjurisdictional Pursuits:**

- 1. Pursuits from this jurisdiction into another jurisdiction:
 - a) Notify, through communications, the other jurisdiction as soon as possible of the reasons for the pursuit, the vehicle description and if assistance is requested.
 - b) Under Kentucky law, a peace officer in actual pursuit may continue a pursuit across corporate or county lines for the purpose of making an arrest.
 - c) When pursuits enter an adjoining state, officers are required to follow that state's laws.

Commented [MJH3]: For the very serious, limited reasons you may pursue, a simple fender bender should not be a reason to abandon the pursuit.

2. Pursuits from another jurisdiction into this jurisdiction:
 - a) The communications staff should determine the number of police vehicles from the other jurisdiction that are involved in the pursuit, find out the circumstances of the pursuit to include the offense, vehicle description and if assistance is requested.
 - b) Supervisors will only approve assistance from this jurisdiction if the pursuit is justified under department policy, and the number is limited to only one vehicle from the outside jurisdiction. In the event that the pursuit is not justified under department policy, an officer may assist in a support capacity alone.
 - c) If the pursuit does not conform to this policy, officers shall not engage in the pursuit but may attempt to control intersections to promote the safety of innocent persons in the vicinity.
 - d) **Stop sticks/spike strips may be used with the on-duty supervisor's authorization on pursuits entering this jurisdiction where an outside pursuing agency is actively engaged to promote the safety of innocent persons in the vicinity.**
 - e) A supervisor from this jurisdiction may proceed to the point of completion of the pursuit as quickly as possible.
 - f) The initiating agency will remain in control of any pursuit that crosses into this jurisdiction and will remain responsible for the pursuit, unless requested otherwise. This provision only applies when the initiating agency has jurisdiction within the Commonwealth of Kentucky to pursue within this state.
 - g) Generally, officers will not continue with a pursuit that has passed through this jurisdiction, once the pursuit has left this jurisdiction.

K. Report and Review Process:

The on-duty supervisor conducts an immediate investigation of the circumstances of the pursuit and shall submit a written report regardless of whether the pursuit was terminated, or the subject was apprehended. The departmental Pursuit Report Form (or state-designated pursuit) shall be completed after a pursuit. In addition to providing the required information on the form, the supervisor will indicate in the narrative section the following:

1. The reasonable suspicion articulated for engaging in the pursuit.
2. An account of all violations committed during the course of the pursuit.
3. A summary of tactics employed to apprehend the subject.
4. The exact point of the apprehension or termination of any pursuit.
5. If the subject is apprehended, there should be an account of the officer's involvement in that arrest.
6. The supervisor's report will include the following:
 - a) Officers assigned to the pursuit and the assignment of all those involved in the pursuit in various roles;
 - b) A summary of any collisions or other incidents arising from or related to the pursuit;
 - c) A complete evaluation on the adherence of the pursuit's conduct to the department's pursuit policy; and
 - d) If the supervisor terminated the pursuit, the time and location that the pursuit was ordered terminated.
7. Collect copies of reports and police vehicle video from all officers involved in the pursuit;

Commented [MJH4]: This terminology not needed.

- a) Order and include a copy of the communications/dispatch tapes;
 - b) Review each report to ensure that all required information is present;
 - c) Conduct an analysis of the pursuit and complete the appropriate section of the pursuit report; and
 - d) Attach copies of the officers'/deputy's reports, including his or her report and forward the packet to **patrol commander**/chief of police/**sheriff**.
8. The **patrol commander or designee of the** chief of police/**sheriff** will **either submit the report to any Accident/Safety Review Board or** determine compliance with the statutes and policies and make a recommendation for further action (various forms of commendation, discipline, suspension, letter, verbal reprimand, and/or retraining).

Commented [MJH5]: Terminology not germane to our department

L. Video Recordings:

Officers may record pursuits utilizing video recordings. These recordings are for law enforcement purposes only and must be held and disseminated in accordance with K.R.S. 189A.100.

M. Training:

Officers should be trained to utilize any equipment or tactic used during a pursuit.

N. Annual Report:

The department shall prepare an annual report evaluating the pursuit history and frequency during that year. This report shall assess the adequacy of the written policy, training and field implementation of the department's pursuit policy.



Policy # Knife/Cutting Tools	Related Policies:
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only for the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable State Statutes:	
KACP Accreditation Standard:	
Date implemented:	Review Date:

POLICY:

Officers of «Insert_LE_Agency» are authorized, to carry knives and/or other cutting tools for purposes pursuant to this policy. This policy is intended to instruct the officer in the acceptable use of the knife/cutting tool in common tasks.

DEFINITIONS:

- **Knife/Cutting tool** - An instrument for cutting, consisting of a sharp-edged metal or composite blade, fitted with a handle of some type. (This would include other tools that have an edged blade, eg. Leatherman® tool)
- **Immediate measure of defense** - Taking action or using any implement to defend the officer's life or safety, or the life or safety of another, with implements or devices not normally intended to be weapons or issued as public safety equipment.
- **Folding knife** - A knife with a hinged blade,
- **Fixed-blade knife** – Any knife in which the blade and the grip or handle are permanently fused in some manner.

PROCEDURES:

Precautions:

Officers are authorized to possess and use a knife/cutting tool both on and off-duty. While in normal duty uniform or in civilian attire, Officers may carry a folding knife/cutting tool in a specifically designed holder on the duty belt or in a pocket. Folding knife blades/cutting tools must not be casually visible to the public, except during intentional use by the officer. During special operations or assignments such as SWAT, search parties in rough terrain, and rescue operations, Officers may carry fix blade knives in sheaths on the belt, and the

knife/cutting tool and sheath may be visible to the public. All carriers, sheaths, and knives/cutting tools must be of the type normally carried by police Officers, and subject to the approval of the Chief or designee.

It is recognized that Officers may have many needs for a knife/cutting tool, including both general work and for limited defensive purposes. While not considered to be a primary weapon of choice in a defense-of-life situation, Officers may, under extraordinary circumstances, use a knife/cutting tool in defense of their life and the lives of others.

General Use:

The officer shall use reasonable care in the general use of the knife/cutting tool as a tool to prevent injury to the officer and others. General use of knives/cutting tools may be employed in such actions as cutting injured occupants out of seat belts, to release flex restraints in emergencies, to pry, open, cut, etc.

The carrying and use of any knife/cutting tool by on and off-duty Officers is done as unobtrusively as possible so as not to alarm any bystander. Officers must use the knife/cutting tool in a safe and responsible manner, taking care not to exhibit or handle the knife/cutting tool carelessly.

Defensive Use:

Officers may use a knife/cutting tool as a weapon of defense under extraordinary circumstances where deadly force is justified under department's Response to Resistance policy. Any use of a knife/cutting tool as a defensive weapon must be in compliance with Response to Resistance policy.

Officers are cautioned that a knife/cutting tool is primarily a cutting tool to assist them in their daily duties and is not intended to be a primary weapon of defense. Extraordinary circumstances, however, may dictate that the knife/cutting tool be used as an immediate measure of defense of life.

The use of a knife/cutting tool against an aggressive, life-threatening suspect can be employed only when the officer has an objective and reasonable belief that human life is in imminent danger of serious physical injury or death, and this belief is based on the totality of the circumstances known to the officer at the time. Officers are cautioned that while any use of deadly force is a grave undertaking by police, the use of any knife/cutting tool against another human being may be viewed as an extraordinary defensive measure, and should be reserved for those extraordinary situations where defensive options are limited.

Reporting Use of Force:

Officers who cause physical injury or death to other persons through the use of a knife/cutting tool, secure the scene as possible, call for medical assistance, and notify their immediate supervisor. Once notified of an incident in which an officer has utilized force, the supervisor will immediately respond to the scene to investigate the incident.



Morehead State University Police Department Standard Operating Procedure Manual



Title: Knives	Chapter: 70 Page(s): 1 - 2	KACP
Approved Date: July 2020	Review Month: June	Issued by: Colonel Merrell J. Harrison Chief of Police

I. PURPOSE

The purpose of this Order is to establish Department Policy and procedure for the carrying and use of knives/cutting tools.

II. DEFINITIONS

- **Knife/Cutting tool** - An instrument for cutting, consisting of a sharp-edged metal or composite blade, fitted with a handle of some type. (This would include other tools that have an edged blade, eg. Leatherman® tool)
- **Immediate measure of defense** - Taking action or using any implement to defend the officer's life or safety, or the life or safety of another, with implements or devices not normally intended to be weapons or issued as public safety equipment.
- **Folding knife** - A knife with a hinged blade,
- **Fixed-blade knife** – Any knife in which the blade and the grip or handle are permanently fused in some manner.

III. POLICY

Officers of Morehead State University Police Department are authorized to carry knives and/or other cutting tools for purposes pursuant to this policy. This policy is intended to instruct the officer in the acceptable use of the knife/cutting tool in common tasks.

IV. PROCEDURES

Precautions:

Officers are authorized to possess and use a knife/cutting tool both on and off-duty. While in normal duty uniform or in civilian attire, Officers may carry a folding knife/cutting tool in a specifically designed holder on the duty belt or in a pocket. Folding knife blades/cutting tools must not be casually visible to the public, except during intentional use by the officer. During special operations or assignments such as search parties in rough terrain, and/or rescue operations, Officers may carry fix blade knives in sheaths on the belt, and the knife/cutting tool and sheath may be visible to the

public. All carriers, sheaths, and knives/cutting tools must be of the type normally carried by police Officers, and subject to the approval of the Chief or designee.

It is recognized that Officers may have many needs for a knife/cutting tool, including both general work and for limited defensive purposes. While not considered to be a primary weapon of choice in a defense-of-life situation, Officers may, under extraordinary circumstances, use a knife/cutting tool in defense of their life and the lives of others.

General Use:

The officer shall use reasonable care in the general use of the knife/cutting tool as a tool to prevent injury to the officer and others. General use of knives/cutting tools may be employed in such actions as cutting injured occupants out of seat belts, to release flex restraints in emergencies, to pry, open, cut, etc.

The carrying and use of any knife/cutting tool by on and off-duty Officers is done as unobtrusively as possible so as not to alarm any bystander. Officers must use the knife/cutting tool in a safe and responsible manner, taking care not to exhibit or handle the knife/cutting tool carelessly.

Defensive Use:

Officers may use a knife/cutting tool as a weapon of defense under extraordinary circumstances where deadly force is justified under department's Response to Resistance policy. Any use of a knife/cutting tool as a defensive weapon must be in compliance with Response to Resistance policy.

Officers are cautioned that a knife/cutting tool is primarily a cutting tool to assist them in their daily duties and is not intended to be a primary weapon of defense. Extraordinary circumstances, however, may dictate that the knife/cutting tool be used as an immediate measure of defense of life.

The use of a knife/cutting tool against an aggressive, life-threatening suspect can be employed only when the officer has an objective and reasonable belief that human life is in imminent danger of serious physical injury or death, and this belief is based on the totality of the circumstances known to the officer at the time. Officers are cautioned that while any use of deadly force is a grave undertaking by police, the use of any knife/cutting tool against another human being may be viewed as an extraordinary defensive measure, and should be reserved for those extraordinary situations where defensive options are limited.

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Officers who cause physical injury or death to other persons through the use of a knife/cutting tool, secure the scene as possible, call for medical assistance, and notify their immediate supervisor. Once notified of an incident in which an officer has utilized force, the supervisor will immediately respond to the scene to investigate the incident.

APPROVE OVC GOVERNING BOARD CERTIFICATION

**BOR (IV-A-8)
August 6, 2020**

Recommendation:

That the Board certify the attached Governing Board statement for the Ohio Valley Conference.

Background:

Morehead State University is a founding member of the Ohio Valley Conference (OVC), and its athletic teams (with the exception of football) compete in the OVC throughout the year. The Conference asks that the governing board of each institution certify that:

- 1) Responsibility for the administration of the athletics program has been delegated to the Chief Executive Officer of the institution.
- 2) The Chief Executive Officer has the mandate and support of the board to operate a program of integrity in full compliance with NCAA, OVC, and all other relevant rules and regulations.
- 3) The Chief Executive Officer, in conjunction with the Director of Athletics and Faculty Athletic Representative, determines how the institutional vote shall be cast on issues of athletics policy presented to the NCAA and the Ohio Valley Conference.

Approval by the Board of this certification would authorize the Board Chair to sign the attached document. This document is an annual certification form.



OHIO VALLEY CONFERENCE

Governing Board Certification Form Academic Year 2020-21

As Chairman of the Governing Board at _____, I attest that:

- 1) Responsibility for the administration of the athletics program has been delegated to the Chief Executive Officer of the institution.
- 2) The Chief Executive Officer has the mandate and support of the board to operate a program of integrity in full compliance with NCAA, OVC, and all other relevant rules and regulations.
- 3) The Chief Executive Officer, in conjunction with the Director of Athletics and Faculty Athletic Representative, determines how the institutional vote shall be cast on issues of athletics policy presented to the NCAA and the Ohio Valley Conference.

Date Presented to the Governing Board: _____

Signed: _____
(Chair of the Governing Board)

Please return completed form to:

*Beth DeBauche
Commissioner
Ohio Valley Conference
215 Centerview Drive, Suite 115
Brentwood, TN 37027
bdebauche@ovc.org*

APPROVE REPURPOSE OF BUCKS FOR BRAINS FUNDS

**BOR (IV-A-9)
August 6, 2020**

Recommendation:

That the Board of Regents approve the proposed repurposing of endowments established through the Bucks for Brains program.

Background:

In 1997, as part of the Kentucky Postsecondary Education Improvement Act, the Kentucky legislature created the Comprehensive University Excellence Trust Fund, commonly known as “Bucks for Brains.” The program used state funds as incentive to match private donations, effectively doubling the impact of private investment supporting strategically defined areas and strengthening key programs at Kentucky universities. All funds, both public and private, are endowed, which provides a perpetual source of funding. MSU’s allocation and raised dollars are held in the MSU Foundation.

The Council on Postsecondary Education administers the program and has provided guidance that requests for changes to the purpose of accounts established through Bucks for Brains must be approved by the governing Board of the University.

The following funds are being presented for repurpose approval:

Current Fund Name: The Buckner and Sally S. Hinkle Endowment for **Humanities**

Current Purpose: Support of visiting professors in the liberal arts.

Proposed Fund Name: The Buckner and Sally S. Hinkle Endowment for Humanities and The Buckner and Sally S. Hinkle Scholarship Endowment

Proposed Purpose: Support of visiting professors in the liberal arts and scholarship support.

Primary Donor(s): The Buckner Hinkle Family

Change Requested by: Buckner Hinkle, Jr.

Reason for Request: The donor is requesting to repurpose one half of the value of the account for scholarships since MSU has a significant need in this area and is the midst of a major fundraising initiative for this purpose. The other half of the fund will remain in the current endowment for the support of visiting professors.

Current Fund Name: Cloma Porter Moore Memorial Scholarship Endowment

Current Purpose: Support of graduate level scholarships for students who are studying in the Volgenau College of Education and have an inclination to remain in eastern Kentucky to teach.

Proposed Fund Name: Cloma Porter Moore Memorial Scholarship Endowment

Proposed Purpose: Support of undergraduate scholarships for students who are completing a long term addiction recovery program.

Primary Donor(s): The Estate of Cloma Porter Moore - Melissa Estep, Executor

Change Requested by: Melissa Estep

Reason for Request: The donor feels a student population closer to her grandmother's intentions and with more needs would be served by making this change.

APPROVE JOB DESCRIPTION

BOR (IV-A-10)
August 6, 2020

Recommendation:

That the Board of Regents approve the President's job description for purposes of SACSCOC reaffirmation.

Background:

Please find the attached job description.

Prepared by: Jacqueline Graves

President

Position Details

Job Description

Job Title	President
FLSA Classification	Exempt
EEO Classification	1F; Full-Time Exec., Admin., Mgr.
MSU Salary Grade	MKT
MSU Position SCHEMA	10S-PRESDTPRES
Job Family	1A - Executive
AAP Code	MC (Main Campus)
Required Education	
Equivalency	
Required Experience Years/Months	
Required Certifications/Licenses	
Classification Effective Date	

Job Summary	The President of the University shall be the chief executive and academic officer of the University. The President shall be selected by the Board for such term as the Board deems advisable, not to exceed four (4) years. The President shall attend all meetings of the Board of Regents. As chief executive officer of the University, the President shall have the powers and duties as defined under duties and responsibilities.
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Essential Duties and Responsibilities	Operates the University in conformity with the purposes and policies as determined by the Board of Regents and develops rules and regulations as are necessary to carry out those purposes and policies. Acts as advisor to the Board of Regents and shall have responsibility for recommending for consideration those policies and programs which in his opinion will best promote the interests of the University. Recommends to the Board of Regents long-range educational goals and programs and the new degrees which may be best suited to attain those goals and programs. Recommends to the Board promotions, leaves of absence, sabbaticals of the faculty and other personnel to the Board for ratification. Develops a suitable organization for the effective administration of the University and designates positions and titles subject to ratification by the Board. Appoints and determines compensation, subject to subsequent ratification by the Board, of any employee of the University under conditions set by the Board. Exercises authority, after consultation with the appropriate officer(s) or employee and the affected individual, subject to subsequent ratification by the Board, to suspend any member of the University at any time for proper cause. Supervises the establishment and maintenance of proper relationships with internal and external constituencies. Maintains effective relationships with the students, guarding and protecting their best interests. Administers discipline of students with the power to impose appropriate penalties including expulsion. The President shall also perform the duties as outlined in the MSU Board of Regents Bylaws.
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Other Duties and Responsibilities	Prepares and submits to the Board a budget request as required by law.
Organizational Relationships	
Minimum Requirements	An earned doctorate from an accredited university in an academic discipline represented at MSU. Extensive and increasingly responsible professional and administrative experience in an institution of higher education at the level of dean or above. Demonstrated leadership in an academic or research environment. A record of achievement in scholarly and professional works sufficient enough to engender the respect of the university community.

Additional Desirable Qualifications

Physical Requirements

Working Conditions

Funding Source

GL Account Number (xx-xxxxxxx-xxxxxx)	10_61001000_5010100
Percentage Funded	100
GL Account Description	Office of President: Salaries & Wages

Employee Information

Employee First Name	Joseph
Employee Middle Initial	A
Employee Last Name	Morgan
MSU ID	m1168438

Supervisor

No supervisor position description specified.

Position Documents

No documents have been attached.

Posting Information

Posting Information

Special Instructions Summary



Morehead State University is committed to providing equal educational opportunities to all persons regardless of race, color, national origin, age, religion, sex, sexual orientation, gender identity, gender expression, disabled veterans, recently separated veterans, other protected veterans, and armed forces service medal veterans, or disability in its educational programs, services, activities, employment policies, and admission of students to any program of study. In this regard the University conforms to all the laws, statutes, and regulations concerning equal employment opportunities and affirmative action. This includes: Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Executive Orders 11246 and 11375, Equal Pay Act of 1963, Vietnam Era Veterans Readjustment Assistance Act of 1974, Age Discrimination in Employment Act of 1967, Sections 503 and 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Kentucky Revised Statutes 207.130 to 207.240; Chapter 344 and other applicable statutes. Vocational educational programs at Morehead State University supported by federal funds include industrial education, vocational agriculture, business education, and the associate degree program in nursing. Any inquiries should be addressed to: Affirmative Action Officer, Morehead State University, 301 Howell-McDowell Administration Building, Morehead, KY 40351, 606-783-2097.